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A
COLLECTION
OF
D E C R E E S
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE USURPATION TO THE PRESENT TIME.

VOL. I.

A
COLLECTION
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D E C R E E S
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE USURPATION TO THE PRESENT TIME,

CAREFULLY EXTRACTED FROM
THE BOOKS OF DECREES AND ORDERS
OF
THE COURT OF EXCHEQUER

(By the Permission of the Court),

AND ARRANGED IN CHRONOLOGICAL ORDER. WITH TABLES OF THE
NAMES OF THE CASES, AND THE CONTENTS.

BY
HUTTON WOOD,

ONE OF THE SIX CLERKS OF THE COURT OF EXCHEQUER.

IN FOUR VOLUMES.

VOLUME THE FIRST.

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1798.

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ERRATA ET ADDENDA.

- Page 10, Line 26, read "*Derisford*" instead of "*Artford*."
— 27, Line 35, read "1647" instead of "647."
— 66, Line 7, read "*enter*" instead of "*entered*."
— 85, In the marginal note read "*places*" instead of "*plate*."
— 103, In the marginal note, read "*pilchards*" instead of "*plchards*."
— 114, In the marginal note, read "1671" instead of "1763."
— 142, In the marginal note, read "*obtained*" instead of "*obtain*."
— 161, In the marginal note, read "*used the park*."
— 172, In the marginal note, read "*in kind of*" instead of "*in kind*."
— 208, Last line but 5, read "*reviver*" instead of "*reversal*."
— 209, Line 10, read "*out of a farm*" instead of "*out a farm*."
— 273, In the marginal note, read "*quint*" instead of "*quit*."
— 273, Last Line, read "*years*" instead of "*riars*."
— 336, Line 19, read "*Chancellor*" instead of "*Lord Chancellor*."
— 391, In the marginal note, read "*Trin. Term, 22 Will. 3,*" instead of "*7 Will. 3.*"
— 433, Read "433" instead of "43."
— 448, Line 19, read "*two lambs and an half*" instead of "*two and a half lambs*."
— 502, Line 1, read "*discharged*" instead of "*disagbared*."
— 526, Read *Mich. Term* 10" instead of "13."
— 534, Line 5, read "*costs at law and in equity*" instead of "*in law and equity*."
— 542, In the marginal note, read "*form*" instead of "*fram*."
— 548, Line 30, read "*in the parish*" instead of "*in parish*."
-

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I N D E X
(BY COUNTIES AND PARISHES)
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I N
THE FOUR VOLUMES
O F
THE FOLLOWING WORK.

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A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
FROM
THE USURPATION,
TO
THE PRESENT TIME.

HINDE, Clerk, *against* HICKES, Baronet.

Staffordshire, 1st July 1650.

TRIN. TERM,
2. CAR. 2.

THE bill recited, that *Sir Edward Littleton, Bart.* was late owner of the rectory and impropriation of *Panke-ridge*, of great yearly value ; that, he being a *delinquent*, the said rectory or impropriation, together with the rest of his estates, were sequestered ; that the plaintiff being curate or minister of the said church, and having but small means or allowance for officiating the cure thereof, not exceeding twenty-four pounds a year, made the same known to the honourable committee for *plundered ministers* ; that the said committee, on the twenty-sixth day of *September 1646*, ordered the yearly sum of fifty pounds to be allowed and paid out of the said impropriate rectory for the increase of the maintenance of the said plaintiff, as minister of the said church, which he ought to enjoy accordingly ; and that the defendant had proper notice of the said order ; but that he, pretending to the estate of the said *Sir Edward Littleton, Bart.* had *extended* the same, whereas, if any such estate be, the same is for the securing of some small sum of money which is paid or discharged, or might be sufficiently

If a rectory be sequestered for non-payment of an augmented salary to the curate of the church, an extent, obtained by a judgment creditor, shall not prevent the payment of the additional salary, unless the writ was executed before the sequestration, or, if afterwards, unless the creditor has obtained an order to receive the rents and profits.

HINDS
against
HICKS.

satisfied out of the lands of the said *Sir Edward Littleton, Bart.* ; and hath entered into the said impropriation, and received the whole profits thereof, and doth deny to let the plaintiff have the said fifty pounds a-year. The bill then prays that the defendant may discover his title, set out what monies are owing to him, and answer to the premises.

The defendant, by his answer, admitted that *Sir Edward Littleton, Bart.* was owner of the rectory and impropriation ; that he was a *delinquent* ; and that, in regard thereof, the said rectory with his other estates were sequestered ; but denied any knowledge that the plaintiff was minister, or officiated as minister of the said church, or what allowance he had for the same, or what orders, if any, had been made by the committee for *plundered ministers*. The answer also stated, that *Sir Edward Littleton, Bart.* in the year 1639, became bound to the defendant in the sum of two thousand pounds for the payment of one thousand pounds ; that, on failure of payment, he obtained a judgment against the said *Sir Edward Littleton, Bart.* but, by reason of the late troublesome times, having received no benefit therefrom, he, in the twenty-first year of CHARLES THE FIRST, sued out an *elegit* upon the said judgment, by virtue whereof it was found, by inquisition, that the said *Sir Edward Littleton, Bart.* was seised of the said rectory or impropriation; and that the said rectory, and the other lands mentioned in the inquisition, were of the yearly value of two hundred pounds ; the moiety of which rectory and lands were delivered to the defendant according to the said writ, to be enjoyed by him and his assigns until he should be satisfied in the sum of one thousand eight hundred and eighty-one pounds ; that since that time he hath enjoyed the said moiety, and received six hundred pounds, which is not above half the principal and interest of the one thousand pounds lent as aforesaid.

The plaintiff replied ; witnesses were examined ; and counsel heard on each side.

And upon reading the depositions of *Richard Stephenson*, the receiver of the lands for the defendant, touching the sums he had received, and the payments he had made ; and because it did not appear that the other lands were extended by the defendant before the sequestration of the rectory, or that, if they were extended after the sequestration, the defendant had received an order from the committee of sequestrations to permit him to receive the profits thereof upon his judgment, which it was necessary for him to do before he did receive any of the profits thereof.

THE COURT ordered and decreed, that the defendant shall pay the arrears of the said augmentation of fifty pounds a year from the twenty-sixth of September 1646, at which time the order of the committee,

committee was made, until this present time, unto the plaintiff, and also shall continue the said yearly payment so long as the plaintiff shall continue minister of the said church, and the defendant shall receive the profits of the said impropriate rectory; unless the defendant shall make it appear to this court that his judgment was executed before the sequestration, or that he had the licence of the said committee of sequestrations to receive the profits of the rectory, which if he shall do then the Court will take further consideration thereof. And it was further ordered by the Court, that the defendant shall pay to the plaintiff *twenty pounds* upon the sight of this order, and *thirty pounds* more at *Michaelmas*, in part of the arrear of the said augmentation.

HINDS
against
HICKS.

STEELE, *Chief Baron.*
RIGBY, *Baron.*

SWINNOCK, Clerk, *against* HIGGINSON.

EASTER TERM
4. CAR. 2.

Kent, 24th May 1652.

THE bill set forth, that about thirteen years since the plaintiff was lawfully inducted of and unto the rectory and parsonage of *Old Romney*; that there is in the said parish, and hath been time out of mind, an ancient custom and usage, that the several inhabitants of the parish, and the owners and occupiers of lands, have always paid to the parson or rector of the said parish for the time being, a composition rate of fourteen pence the acre yearly for the several quantities or number of acres of meadow and pasture land which they respectively hold and occupy within the said parish, for and in lieu of all manner of tithes of the said meadow and pasture land; that the said rate of fourteen pence the acre hath been duly paid to the plaintiff and his predecessors until of late; that the defendant for ten years past hath had and occupied several acres of meadow, pasture, and marsh land within the said parish, for which he ought to pay fourteen pence the acre yearly, according to the composition rate and custom aforesaid; but that he doth deny, and refuse to pay the same to the plaintiff.

A custom to pay fourteen pence an acre for all meadow and pasture land, in lieu of all manner of tithes of the said lands, is good.

The defendant by his answer denied the custom.

The plaintiff thereupon replied; and witnesses were examined on the part of the plaintiff; and the cause came on to be heard this day.

And forasmuch as the plaintiff had fully proved the custom, and that the defendant is in arrear according to the charge of the bill; and the defendant being served with a *subpoena* to hear judgment, and being now present in court, but having retained no counsel; and upon hearing counsel for the plaintiff, and reading the answer, and the depositions taken in the cause,

THE COURT ordered, that the defendant shall shew cause why he should not pay to the plaintiff the tithes due for the said

DECREES IN TITHE CAUSES

SWINNOCK said one hundred and fifty acres for ten years, after the rate of
against
HIGGINSON. fourteen pence an acre; and why a decree should not be drawn up accordingly.

21st June 1652. And in *Trinity Term*, in the fourth year of *Charles the Second*, no counsel attending for the defendant, and upon hearing counsel for the plaintiff,

THE COURT ordered, that the defendant shall pay to the said plaintiff eighty-seven pounds ten shillings for the arrears of the said composition rate for the said tithes due for the said one hundred and fifty acres for ten years, ending at *Michaelmas* 1649, after the rate of fourteen pence an acre, forthwith upon sight of this decree, or a true copy thereof.

STEELE, *Chief Baron.*
 THORPE, *Baron.*

TRIN. TERM,
 4. CAR. 2.

BAYNTON, Knight, *against* BENNETT.

Wiltshire, 28th June 1652.

A custom to pay twelve bushels of wheat out of certain lands in one parish as a composition to the rector of another parish is good.

THE bill stated, that the late dean and chapter of the cathedral church of *Winchester*, by indenture under their common seal, dated the twenty-sixth day of *June*, in the eleventh year of *Charles the First*, did “demise and grant unto *T. Lambert* all that rectory and parsonage of *Rewill*, with all houses, and tithing of corn and grafs, and all commodities to the same belonging, which he then had, or that *H. Blackborrow* or *J. Blagden*, or their assigns, before had, or ought to have, belonging to the said rectory, to have and to hold to the said *T. Lambert*, his executors and assigns, for twenty-one years;” that afterwards the same, by several conveyances, came to *William Dunch*, who for some time enjoyed the same; that in *February* 1646 he conveyed the same to the plaintiff, who, by virtue thereof, became possessed of the said rectory and premises, and received the profits thereof; and that amongst other things belonging to the said rectory there is due to the rector and impropriator, about the first day of *November* yearly, twelve bushels of wheat out of certain lands in the parish of *Steeple Ashton*, as a portion of tithes or composition for tithes arising out of the said lands, which hath been paid for the space of sixty years and upwards by the tenants to the rector and impropriator of *Rewill*, and which the defendant himself, until of late, hath constantly paid; but that for five years past he had refused to pay the said twelve bushels of wheat; and also hath refused to let plaintiff know from what lands the said tithes arise; and thereupon he prayed the aid of the court to be relieved in the premises.

The

The defendant answered, and confessed, that he had paid twelve bushels of wheat to the rector of *Rewill* every year for twenty-one years, but at no certain times; but denied that he paid it as a portion of tithes, or as a composition for tithes.

BAYNTON
against
BENNETT.

The plaintiff replied; the defendant rejoined; and witnesses were examined.

The cause came on to be heard this day before MR. BARON THORPE; and upon debate of the matter, and reading the depositions of divers witnesses in the cause,

THE COURT ordered, that the plaintiff shall bring an action, wherein he shall declare, that the defendant, in consideration of five shillings in hand paid by the plaintiff, hath affirmed and promised, that if the plaintiff shall prove that the owners and farmers of the farm of *Steeple Ashtan* have accustomed, and for the time being ought to pay twelve bushels of wheat yearly, as a portion of tithes or composition for tithes, to the rector of *Rewill* for the time being, that then he the said defendant will pay to the plaintiff forty shillings; the defendant at the trial to admit the plaintiff's title to the rectory of *Rewill*, and insist only upon the right of payment of the said twelve bushels of wheat yearly.

An issue directed to try the custom.

The said trial was had accordingly, and a verdict given for the plaintiff. And upon hearing counsel for the said parties,

THE COURT ordered, that the defendant shall pay to the plaintiff twenty pounds for the arrears of the tithes in question for five years, and that for the future he shall continue the payment of the said tithes.

The payment decreed.

STEELE, Chief Baron.
THORPE, Baron.

AUDLEY against FIDDY and Others,
Yorkshire, 20th November 1654.

MICH. TERM,
6. CAR. 2.

THE bill set forth, that *William Wood*, late prior of the monastery of *Bridlington*, was heretofore seised, in right of his said house and priory, of and in the rectory of *Scarborough*, and of all houses, buildings, and glebe lands, tithes of corn, grain, hay, and yearly profits or customary payments for fish taken at sea by the inhabitants of the town of *Scarborough*; that the said priory and rectory came to the crown in the reign of *Henry the Eighth* by the attainder of the said *William Wood*, the said late prior, for high treason; by reason whereof *King Henry the Eighth* became lawfully seised of the said rectory and premises in his demesne as of fee in right of his crown; that the inhabitants of the town of *Scarborough*, which is situated upon the shore of the main sea,

A custom that the fishermen of *Scarborough* shall pay to the rector the twentieth part of all fish they shall catch in the sea, or the twentieth part of the value thereof, in lieu of all tithes for keeping fishing ships, boats, and cobbles, &c. is good.

See stat. 3. Edw. 6. c. 13. s. 11. Noy, 108. 1. Roll. Rep. 419. 1. Sid. 278. 1. Lev. 179, 2. Keb. 273. 1. Roll. Abr. 636. Cro. Car. 339. 2. Vent. 5.

AUDLEY
against
FIDDY.

The custom
stated.

Grant of the
rectory to the
plaintiff for life.

The defendants,
being fishermen
of Scarborough,
refused to pay
tithe.

have used, time whereof the memory of man is not to the contrary, to keep ships, cobbles, and boats, wherein they use to go to sea and catch fish, and whereby they have used a constant trade of fishing for herrings, cods, ling, haddocks, whittings, and other sorts of sea fish, and have gained their living and livelihood thereby ; and they using the said trade, by the like custom, time whereof the memory of man is not to the contrary, have used to be answerable and accountable for, and to pay from time to time to the said rector for the same, for the time being, the twentieth part of all such fish as they took at sea, or the twentieth part of the value of the said fish, wheresoever the same could be sold, by way of recompence or satisfaction for the employment of the said ships, cobbles, and boats, and of the labour of the said inhabitants for exercising themselves in the said trade of fishing ; that accordingly, after the said rectory came to the crown by the dissolution of the said priory of *Bridlington*, the said profit for employment of ships and boats as aforesaid, among other the tithes and profits belonging to the said rectory, was particularly answered to the crown, and stood in charge under a distinct value among other the particulars belonging to the said rectory, and so continued until the said rectory was granted out by lease to others, and then the said profit was made parcel of the particulars of the said rectory, and the rent of the same increased thereby ; that after the death of the late *King Henry the Eighth* the said rectory and premises descended and came as of right to *King Edward the Sixth*, *Queen Mary*, and *Queen Elizabeth* ; that the said *Queen Elizabeth*, being so seised, by her letters patents, dated the twenty-second day of *December*, in the thirty-fifth year of her reign, and enrolled in the high court of chancery, did give, grant, and to farm let, unto *John Audley*, the plaintiff's father, and *Susan* his then wife, and to the plaintiff, the said rectory and church of *Scarborough*, and all the tithes and yearly profits and customary payments for fish aforesaid, to have and to hold the same for their lives, at the yearly rent of one hundred and fourteen pounds six shillings and eight-pence, payable half-yearly ; that the said plaintiff's father and mother have long since been dead, and plaintiff hath been seised of all the said rectory, &c. as aforesaid, and hath quietly held, received, and enjoyed the same, and the profits thereof, for twenty-five years and upwards, until five years last past ; that the said defendants, being fishermen of *Scarborough*, who for five years last past had used the said trade of fishing with ships, boats, and cobbles, and had yearly taken great store of fish at sea, and sold the same at several places, and thereby had made and raised to themselves good profit to each of them, had denied and refused to satisfy and pay the said plaintiff the said profit or customary payment, or to give him any satisfaction for the same, pretending some release and discharge from the plaintiff. Therefore he, by his said bill, prayed relief of the court.

The

The defendants *Fiddy* and *Dinke* by their answers denied that the said *W. Wood* was seised in right of the priory of *Bridlington* of the rectory of *Scarborough*; and said, that they knew not that the said rectory and priory came to the crown by attainder, nor could a prior forfeit his priory for a personal crime without an act of parliament. They confessed that the inhabitants of *Scarborough*, time out of mind, had kept ships and boats, wherein they used a trade of fishing for herrings, cod, whittings, and other sea-fish, and gained their livelihood thereby; but they denied that time out of mind and deny the fishermen of *Scarborough* have used to pay the twentieth part of fish by them taken, or the twentieth part of the value thereof, as charged in bill; and that they knew not that by the dissolution of the said monastery the said profits came to the crown, and stood charged under a distinct value, and so continued until the same was made parcel of the said rectory, and the rent of the same increased thereby; nor that the said rectory did descend to *Queen Elizabeth*, or was granted by her to the said plaintiff and the joint patentees, nor whether the same be come to the plaintiff; that they knew not what rent is reserved, nor ought they to pay any rent for the said profits of fishing, for they are informed that some ancient men were lately living who affirmed, that nothing was exacted as of right, but that the payments were what the owner voluntarily pleased. They also averred, that no profit for lobsters was ever paid or demanded by the rectors of the said rectory; but confessed, that the said rectors have had of the defendants and others, sometimes more or less, compositions for fish sold in that port, and that they have exacted fish in kind, or composition for fish, though not vended there, but that the same was done by force, and the payments made for fear of suits; that they have used the trade of fishing with boats and cobbles for five years, and have sold the same at several places, but not to the amount of fourscore pounds each of them a year.

AUDLEY
against
FIDDY.

plaintiff's right
to the tithe in
question,

alleging, that
the former pay-
ments were vo-
luntary or ex-
acted.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

The cause had come on to be heard on the sixth of *February* 1653; and upon opening the bill, and reading the defendant's answers, and the grant made by the late *Queen Elizabeth* to the plaintiff and others of the rectory of *Scarborough*; and also upon reading some ancient *ministers accounts*, shewing what hath been answered for the twentieth part since the said rectory came to the crown; and also on reading the depositions taken on the plaintiff's part in the said cause,

A provisional
decree in favour
of the plaintiff,

IT WAS ORDERED by the Court, that a decree should be drawn up to establish the possession of the payment of the said twentieth part of the fish taken by the inhabitants of *Scarborough* now in question with the plaintiff and his assigns until he or they

By BARON
THORPE.

ANDLEY
against
FIDDY.

they be evicted by law, unless cause shall be shewn to the contrary ; at which time the court will consider what allowance shall be given to the plaintiff for the said twentieth part for the five years arrears mentioned in the bill, according to the proofs in the cause.

The defendant not shewing any cause last Term, pursuant to the said order, the Court was moved on behalf of the plaintiff on the fifth of *May* 1653.

The decree
drawn up.

Whereupon IT WAS ORDERED, that a decree should be drawn up according to the purport of the said recited order, and tendered to THE BARONS of this Court to be signed, so as it might be entered, unless cause was shewn to the contrary.

But upon the motion of counsel for the defendants, it being alledged that the said defendants were not ready at the time of the said hearing, nor made any defence therein, by reason they sent up their commission and depositions thereupon taken by a messenger who could not depose his receipt thereof from the commissioners,

A rehearing
granted.

IT WAS THEREFORE ORDERED by the Court, on the tenth of *May*, that, the defendant paying the plaintiff five pounds costs, the said cause should be reheard ; and upon full and deliberate hearing of the said cause, and the same being strongly debated by counsel on both sides,

An issue directed
to try the
custom.

IT WAS ORDERED by the Court, by and with the consent of both parties, that the custom set forth in the said bill shall be referred to a *trial at law*, in an action to be brought by the plaintiff against the defendants after the usual manner ; in which action both parties shall stand only upon *the custom* : which action shall be tried at the bar of this court by a jury of *Middlesex*, and the equity of the bill be reserved until after the said trial.

A verdict found
for the plaintiff.

The trial being had according to the said order, and the plaintiff, having fully proved the custom, obtained a verdict, and on the seventeenth of *November* 1654, the Court was moved by the plaintiff's counsel, that inasmuch as the plaintiff had obtained a verdict upon the trial, and judgment entered thereupon, the possession of the payment of the said twentieth part of the fish in question might be established with the plaintiff, and that a decree might be drawn up thereupon, according to the order of the sixth of *February* last ; and that the Court would be pleased to consider what allowance should be given to the plaintiff for the twentieth part for the five years mentioned in the said bill.

IT WAS THEREUPON ORDERED by the Court, that the said decree formerly pronounced by the Court as aforesaid should be drawn

drawn up and made absolute, and the possession of the payment of the twentieth part of the fish in question established with the said plaintiff, wherein consideration should be taken of the said arrears, unless cause was shewn to the contrary on this day.

AUDLEY
against
FIDDY.

And no cause being shewed to the contrary,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court, that the possession of the twentieth part of the fish taken at sea by the defendants or either of them, being inhabitants of the town of *Scarborough* aforesaid, and using the trade of fishing there, or the value thereof, shall be established with the plaintiff or his assigns; and that the said defendants shall for the future pay to the said plaintiff, or to his assignee or assignees, during his or their estate in the premises, the twentieth part of the fish hereafter to be by them taken at sea, or the twentieth part of the value of the said fish wheresoever the same shall be taken up or sold, according to the custom before set forth in the bill.

Payment of the
tithes decreed,
pursuant to the
custom.

And as touching the arrears thereof for the five years next before the exhibiting of the said bill; forasmuch as it is proved by the plaintiff that the said twentieth part of the fish in question taken by each of the said defendants in each of the said five years respectively was worth four pounds, which will amount in all to forty pounds,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by this Court, that the said defendants shall respectively pay to the said plaintiff, or to his assignee or assignees, the sum of twenty pounds a-piece, in lieu of the twentieth part of the said fish taken and sold by the said defendants during the said five years before the exhibiting of the said bill,

THORPE, *Baron.*
NICHOLAS, *Baron.*

THOROWGOOD, Knight, and Others *against* DELABARRE. TRIN. TERM,
6. CAR. 2.
Kent, 1st June 1654.

THE plaintiff's bill set forth, that by an act of parliament made the eighth of *June* 1649, it was enacted, "that all tithes appropriate of archbishops and bishops which, at any time within ten years before the beginning of that parliament, they held and enjoyed in right of their archbishoprics and bishoprics, with all deeds and evidences concerning the same, should, from the sixth of *January* 1649, be vested and settled in the real and actual possession of and seisin of *Sir Henry Holcroft Knight*, and *F. West*, since deceased, and of the said plaintiffs and their heirs, and the survivor and survivors of

If a rector demise the rectory for years, and covenant to pay all tithes, taxes, and subsidies assessed by parliament or convocation on the said manor, the assignee of the reversion is bound to allow to the

officer or his assigns a proportionate part of a parliamentary tax for the use of the army assessed on a landlord mediate and immediate.

" them,

THOROWGOOD **“ them, without any entry or other act, in trust, for the intent**
 against **“ mentioned in the said act ;” that by virtue of that act of**
 DELABARRE. **parliament, they, the said plaintiffs, became seised of the premises,**
and, amongst others, of the tithes of the impropriate rectory of
 The plaintiffs ***Dartford*, belonging to the late *Bishop of Rochester* ; that by**
 intitle them- **another act made in the same parliament, the first of *April* 1650,**
 selves to the **the said *Sir H. Hlcroft, F. West*, and the said plaintiffs were also**
 rectory, as trust- **entitled to receive all arrears of the said tithes, not particularly**
 tees under an act **disposed of by the parliament, due from the first of *December***
 of parliament. **1641 to the ninth of *October* 1646 ; that the said defendant hath**
been tenant, possessor, or occupier of the said tithes of the impro-
priate rectory of *Dartford* from the said sixth of *January* 1649,
and had received the profits thereof during that time, and refused
or neglected to account with the plaintiff for the same, or
satisfy and pay the same to the said plaintiff, under pretence of
a lease from the said *Bishop of Rochester* for years yet to come, for
a certain rent ; and that he refused to produce the same to the
plaintiff, or to pay any rent reserved upon the same, or to give
copies of such lease, whereby the said plaintiffs are disabled to
discharge the trust in them reposed, or to give a satisfactory
account to the state when they shall be called upon. To be
relieved in all which premises they exhibited their bill, and
prayed that the said defendant might answer the premises.

The defendant states himself to be lessee of the rectory, with a covenant on the part of the rector to pay all parliamentary taxes ; and that he offered to pay the rent, deducting the taxes.

The defendant answered, and confessed that the late *Bishop of Rochester* was seised of the impropriate rectory and the manor of *artford* ; and that he, on the fourteenth of *May* 1640, demised the same to *E. Darcey* for twenty-one years, under the yearly rent of twenty-five pounds, payable half-yearly ; and that the said *Bishop of Rochester*, for him and his successors, “ did covenant and agree with the said *E. Darcey*, his executors and assigns, that the said *Bishop of Rochester* and his successors should, at his and their proper costs and charges, pay, bear, and support all and every the charge and charges whatsoever for the said manor and parsonage, coming, growing, or due, and also all and every the tenths, dismes, fifteenths, and subsidies, by authority of parliament or convocation, or otherwise granted or to be granted during the said term ;” that the said *E. Darcey*, on the thirty-first of *January* 1646, did assign over the premises to *J. Vasse* in trust for the said defendant ; that he had received the rents and profits of the premises ever since, and hath paid the said rent to the plaintiffs until the twentieth of *August* 1651, and that he was and is ready, and hath offered to pay the said plaintiffs the rent due, so as the said plaintiffs will allow the taxes and payments assessed upon the same by order of parliament, according to the agreement and covenant in the said lease made by the said *Bishop of Rochester* to *E. Darcey*.

The plaintiff replied ; and witnesses were examined on both sides ; and upon hearing counsel, and after much debate in the cause,

Forasmuch

Forasmuch as the defendant, by his answer, hath not set forth what particular kinds of taxes he would have abated, nor when those taxes were granted, nor hath made any proof what taxes he hath paid, but did now alledge the same to be taxes for the army,

THOROWGOOD
against
DELABARRÉ,

THE COURT doth adjudge and declare, that the covenant in the lease, mentioned in the answer, made by the late *Bishop of Rochester* to *E. Darcey*, doth not extend to discharge the defendant from the payment of the said taxes.

The tax to be
paid by the les-
see,

But because the ordinances and acts of parliament for the paying of the said taxes for the army do lay the same by the way of a land rate upon landlords, both mediate and immediate, according to their respective interests, therefore the plaintiff's, by virtue thereof, are to bear a proportionable part of the taxes, according to the rent reserved upon the said lease, which appeareth to be twenty-five pounds *per annum*, and the said impropriate tithes to be worth one hundred and twenty-five pounds a-year.

and deducted
from the rent,

THE COURT therefore ordered, that the defendant shall forthwith satisfy and pay to the plaintiff, or their assigns, twenty-five pounds for the arrears of the rent for one year, ended 1652, having allowance of the taxes paid out of the premises during the same time, after the rate and proportion of the yearly rent of twenty-five pounds only; and that the defendant, his executors, administrators, and assigns, shall for the future, during the remainder of the term in the lease specified, continue the payment of the yearly rent of twenty-five pounds to the plaintiffs or their assigns, deducting only such taxes out of the same according to the rate and proportion of twenty-five pounds a-year as shall be thereupon lawfully charged.

according to the
proportion
which the rent
bears to the va-
lue of the tithes.

And IT IS FURTHER ORDERED, that the said plaintiffs shall have a true copy of the said lease, if they shall desire the same.

THORPE, *Baron*.
NICHOLAS, *Baron*,

PAGE *against* LAWE.

Northamptonshire, 26th October 1654.

MICH. TERM,
6. CAR. 2.

THE bill stated, that the plaintiff had been for twelve years past the true owner and proprietor of the impropriate rectory or parsonage of *Cundle*, and that he ought to have had all manner of tithes of corn, grain, hay, furzes, wool, lambs, milk, calves, and all other great and small tithes arising within the manor or

Tithe is due for
furze cut. The
inhabitants of a
hamlet shall pay
tithes to the rec-
tor of the parish.
A custom stated,

that the inhabitants of a hamlet shall pay 13s. 4d. yearly, in lieu of all small tithes.

PAGE
against
LAW.

The plaintiff
claims the tithe
of *furze* and
small tithes in
kind.

lordship of *Cundle*, and all the hamlets, and places, and territories whatsoever, part of the said manor, as belonging to the said rectory ; that the hamlet of *Ashton* then was, and always hath been, within the said rectory of *Cundle* ; that the inhabitants of the said hamlet have always paid, and ought of right to pay, their tithes arising and renewing within the said hamlet to the rector of the said rectory in kind ; that the defendant was an inhabitant in *Ashton* aforesaid for several years past, and ought to have paid his tithes to the plaintiff, but that for seven years past he had not set out for the plaintiff any tithes of *furzes* growing therein, although he had cut several ; that he also denied to pay to the said plaintiff any tithes of wool, lamb, milk, calves, pigs, pigeons, turkeys, apples, and other fruit, or any other of his small tithes, although he had sheared many sheep, and had many lambs, calves, pigs, turkeys, pigeons, apples, and other fruit, and much milk within the said rectory, for which he ought to have paid tithes in kind to plaintiff ; and he prayed that the defendant might set forth what quantity of *furze* he had cut down and carried away for seven years past, and what small tithes he had in the said hamlet of *Ashton*, and give the plaintiff a satisfaction for the same.

The defendant
pleads a cus-
tomary payment
in lieu of small
tithes.

The defendant answered, and alledged, that although he had been an inhabitant in *Ashton* aforesaid, for the time mentioned, yet he never paid any tithes for *furzes* or *pigeons* to the plaintiff, or any other impropiator of *Cundle*, nor doth he conceive any ought to be paid for the same, or any thing in lieu thereof : and for the other tithes in the bill mentioned, called *small tithes*, he denied the same, or any part of them, to be due and of right belonging and payable in kind to the plaintiff, or any other impropiator of the said rectory ; for that the custom and usage, time out of mind or otherwise, hath been in the said hamlet of *Ashton*, “ that the inhabitants of the said hamlet shall pay a rate
“ or sum of money in gross, or as a rent, to the impropiator of
“ *Cundle*, of thirteen shillings and fourpence yearly, in lieu and
“ satisfaction of all tithes commonly called *small tithes*, or white
“ tithes, yearly arising in the said hamlet ;” that the defendant had made a tender of the same to the plaintiff, in satisfaction of the said small tithes, which he had refused to accept. The defendant by his further answer set forth the number of sheep, lambs, and calves he had, which were depastured in the common fields of the village or hamlet of *Ashton*.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on the part of the plaintiff only.

Upon opening the pleadings, and reading of several depositions, and of several records produced by the defendant,

It

IT IS ORDERED AND DECREED by the Court, that the possession of the said tithe *furzes* shall be settled with the said plaintiff. By BARON .
THORPE and
BARON NICHOLAS.

IT IS FURTHER ORDERED, that the possession of the said small tithes shall be established with the said plaintiff until he be evicted by law.

And to the end a trial may be had touching the manner of tithing mentioned in the answer, IT IS FURTHER ORDERED, that the defendant shall bring an action against plaintiff, and that the custom of tithing shall be the only thing to be tried. An issue directed to try the custom.
And the equity of the said cause reserved.

In pursuance of the said order, a trial was had, and a verdict given for the plaintiff. TRIN. TERM,
7. CAR. 2.

Upon hearing Counsel on both sides, and reading the said order, and the record of the said trial,

IT IS ORDERED by the Court, that the said defendant shall pay to the said plaintiff eight pounds for the tithes in question, and shall continue the payment of the tithes for the future to the plaintiff. And IT IS FURTHER ORDERED, that the said defendant shall pay to the said plaintiff four marks for his costs. Tithes in kind decreed.

WM. STEELE, *Chief Baron.*

TOWRIE *against* PEARSON.

MICH. TERM,
6. CAR. 2.

Yorkshire, 13th November 1654.

THE bill set forth, that the late KING JAMES was heretofore seised, in his *demesne as of fee*, in right of his late crown of England, of and in the rectory of *Kirkby Grindelitch*, with the rights, members, and appurtenances thereof; and being so seised, by his letters patents sealed, dated the twenty-sixth of February, in the fourth year of his reign over England, did give and grant the said rectory and premises to *Richard Foster* and his heirs for ever, yearly paying eight pounds; by virtue whereof the said *Richard Foster* became seised of the said rectory and premises in fee; which estate was, by good and sufficient conveyance and assurance, conveyed to the said plaintiff, who hath for many years last past enjoyed the same; that a certain messuage and grounds called *Mowthorpe Grainge* is, and time out of mind hath been, and was ever reputed and taken to be within the said rectory and the titheable places of the same; that the owners or occupiers of the said *Mowthorpe Grainge*, with the lands and grounds to the same belonging, have continually, and time out of mind, paid, and been accustomed to pay, all manner of tithes A minister's accounts, a papal bull, and an ancient parish register deposited in the archives of a college may be read in evidence.

TOWRIE
against
PEARSON.

The plaintiff
claims tithes of
cattle depastured
on *Mowthorpe*
Grange.

tithes arising upon the said *Grange*, lands, and grounds; and that the said tithes were so paid by the owner and occupier of the said grange and grounds from time to time without any manner of question or denial until of late that the said defendant, being occupier of the same, began to deny to pay to the plaintiff the tithes of wool, and lamb, and calve yearly arising therefrom; that for five years past, the said defendant hath occupied the same, and had yearly kept, fed, and depastured divers beasts, and cattle upon the said ground, viz. ewes, weathers, and milch cows, the tithes of which were worth yearly twenty pounds, which he had denied to pay to the said plaintiff; and he prayed, that the defendant may discover and declare the reasons forso doing, and may set forth the number of sheep and cows, and the value of the tithes he had in the said years; and that he may pay a satisfaction for the same.

The defendant
pleads that the
lands were parcel
of a dissolved
monastery,

and discharged
from the pay-
ment of tithes;

The defendant answered, and confessed, that he is owner and occupier of the said grange and grounds, and that he doth deny to pay the tithes of wool, lamb, and calve, yearly arising and renewing thereof, for that he conceives no tithes ought to be paid of, for, or in respect of the same, or any part thereof, for that the said grange, lands, and grounds were parcel of the land and possession of and belonging to the late dissolved monastery of *Old Malton*, and in the hands and possession of the prior of the said monastery at the time of the dissolution of the same in the reign of KING HENRY THE EIGHTH, or in the hands and possession of some of his predecessors, priors of the said monastery, in right of the said house and convent, before the said dissolution, and that during all the time that the said grange, lands, and grounds, do continue in the possession and occupation of the owner thereof, no tithes ought to be paid out of the same, for that during the time they remained in the hands and possession of the said prior and his predecessors, they were discharged of payment of tithes, and the same were so discharged at or before the dissolution of the said monastery; that the said rectory of *Kirkby Grindelitch* was then also parcel of the *Abbey of Kirkam*, and being parcel of the said abbey came to the crown in the reign of HENRY THE EIGHTH by the dissolution of the said abbey; that the said grange, lands, and grounds, being parcel of the said late dissolved monastery of *Old Malton*, and being so discharged of tithes as aforesaid, came to the crown in the thirty-first year of the reign of the said king, by the dissolution of the said monastery; that the said HENRY THE EIGHTH being seised of the said grange and lands, and of the said rectory, the same, by and after his death, came to the late KING EDWARD THE SIXTH, who, by his letters patents, did give and grant unto JOHN, then *Earl of Warwick*, all the said grange, farm, tenements, and hereditaments of *Mowthorpe*, with all the appurtenances whatsoever, to have and to hold to him the said *Earl of Warwick*, his heirs and assigns,

assigns, for ever, under the yearly rent of twenty shillings thereby reserved ; and that the said *Earl of Warwick*, his heirs and assigns, should and might have, hold, use, and enjoy, within the said grange, lands, and grounds, so many and such rights, privileges, jurisdictions, franchises, liberties, commodities, profits, emoluments, and hereditaments whatsoever, with all and singular the premises, as the last abbot of the said late monastery of *Malton*, in right of the said late monastery, or any of his predecessors, or any other, at any time heretofore, having and possessing the premises, or any part thereof, had used or enjoyed, or ought, might, or could have held, used, or enjoyed, in the said grange, lands, and grounds, by reason or pretence of any letters patents of any of his progenitors, or by reason or pretence of any lawful prescription, use, or custom, or otherwise in any lawful manner whatsoever ; that the said grange, lands, and premises are now, by mesne conveyances and assurances well and sufficiently conveyed to the defendant and his heirs, and that he is lawfully seised thereof, and to have and enjoy the same, with all the rights, privileges, &c. as the same were granted to the said late *Earl of Warwick*, or as the last abbot of the said late monastery of *Old Malton* heretofore had held and enjoyed the same. The answer also states, that the defendant hath been owner and seised of the one moiety of the said grange, lands, and premises since the twenty-sixth of *March* 1650, and not before and of the other moiety thereof since the third of *November* 1652 ; and confessed, that during the said times only that he was owner as aforesaid, he hath refused to pay any tithes to the plaintiff, as he hoped he might lawfully do ; but denied the depasturing of any cattle, as stated in the bill, during the said time, and only a few ewes, weathers, and milch cows ; and also that the tithes of the same so kept, fed, and depastured in said years were worth yearly twenty pounds.

TOWRIE
against
PEARSON.

and conveyed,
so discharged, to
the defendant.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides.

The cause came on to be heard on the sixth instant, when the plaintiff attended the hearing by his counsel ; but the defendant's counsel alledging that they were not prepared for the said hearing, by reason of the want of some records, &c. concerning the discharge of the tithes in question, IT WAS THEREUPON ORDERED, that the said defendant should pay to the said plaintiff five pounds costs, and the said cause to be heard this present day.

The hearing of
the cause ad-
journed, on pay-
ment of costs.

Now upon opening the pleadings, and reading the *letters patent* of the said late KING JAMES, dated the twenty-sixth of *February*, in the fourth year of his reign, made to the said *Richard Foster*, whereby the said rectory of *Kirkby Grindelitch* and the said tithes in *Mowthorpe* and *Mowthorpe Grainge*, as late parcel of the said possessions of the said late dissolved monastery of *Kirkham*,

Certain deeds
and writings
read in evidence.

TOWRIE
against
PEARSON.

Kirkham, were conveyed to the said *Richard Foster*, under whom the plaintiff claims the tithes in question. And upon reading several *ministers accounts* to prove how the said lands came to the crown, and of several depositions taken on the part of the plaintiff in the said cause; and also upon reading the copy of part of an *ancient writing* or *bull* of POPE INNOCENT THE THIRD out of the *Register of Alvingham*, remaining in — *College*, in the university of *Oxford*, produced by the defendant, whereby it was endeavoured to be made out, that the said grange and lands were exempted and discharged from payment of tithes: and upon full and deliberate hearing and debating of the said cause,

An issue directed.

IT WAS ORDERED by the Court, that the right of the tithes in question shall be tried by an action to be brought at law, by the defendant against the plaintiff, in which action the defendant is to prove, that the land out of which the plaintiff now demands tithes of wool and lamb ought to be discharged thereof, as in his answer is set forth; the action to be tried at the bar of this court; the plaintiff to have a copy of the said *bull* now produced in court by the defendant; and the equity of the cause to be reserved.

TRIN. TERM,
7. CAR. 2.

HARDWICKE, Clerk, *against* NEWCE.

Hertfordshire, 21st June 1655.

A chaplain appointed to officiate by an order of the house of commons intitled to tithes.
S. C. Hard. 4.

THE plaintiff being minister of the parish-church of *Much-Hadam*, in *Hertfordshire*, preferred his bill concerning the tithes of two hundred acres of arable land and eighteen acres of meadow within the said parish, held by the defendant in 1653, and for the tithe of wool and lambs sheared and fallen thereon, and for the tithe of ten acres of upland meadow within the said parish, cut by the said defendant, at fourpence by the acre, according to the custom there used.

The defendant answered, and denied the plaintiff's title to the said tithes.

The plaintiff replied; and witnesses were examined on both sides.

Upon opening the bill, and reading the answer of the defendant, who did not appear, although duly subpoenaed, to hear judgment, as appeared by affidavit; and upon reading an order of the honourable house of commons, assembled in parliament, made the twentieth of *December* 1643, whereby, for the causes in the said order expressed, it was ordered by the said commons, that the said benefice of *Much-Hadam*, and the profits thereof should be forthwith sequestered for *J. Paske*, doctor in divinity the then rector there; and that the said now plaintiff, then chaplain to the lord general, should officiate the said cure

ture of *Much-hadam*, and preach diligently there; and that he, paying all duties due to his majesty out of the said rectory, should have, for his pains therein, the parsonage-house, glebe lands, and all the profits, tithes, and revenues of or belonging to the said church of *Much-hadam* until further order should be taken by the said house of commons; and also upon reading the depositions of divers witnesses proving the value of the tithes detained from the plaintiff by the defendant,

HARDWICK
against
NEWCE.

IT IS ORDERED by the Court, that the defendant shall pay to the plaintiff fifty-two pounds four shillings and fourpence for the value of the said tithes by him detained from the plaintiff, unless cause be shewn to the contrary.

Now, upon hearing of counsel on both sides, and upon debate had concerning the validity of the plaintiff's title to the tithes by the order of the house of commons, and also concerning *the value* of the tithes (a), forasmuch as the witnesses examined in this cause do differ in the valuation of the tithes,

28th June 1655.

IT IS ORDERED by the Court, that the defendant do pay to the plaintiff forty pounds for the value of his tithes for the said year, and that he shall from time to time pay to the plaintiff all such tithes and other dues as shall of right belong to the plaintiff for the time to come, so long as the plaintiff shall continue minister of the parish.

Present, W.
STEELE, Lord
Chief Baron.

(a) This case is reported by *Hardres*, 4, who says, that the plaintiff exhibited his bill as parson of the parish for predial and other tithes, and upon proof of the quantity and values had a decree for the

whole; which, as THE CLERKS said, was the constant practice where a bill is exhibited for *predial tithes*, and the *single value* only demanded.

THE ATTORNEY GENERAL *against* BEARCROFT. TRIN. TERM,
7. CAR. 2.

London, 25th June 1655.

THE bill set forth, that *King James* being seised in fee, in right of his crown of *England*, of and in the rectory and parsonage impropriate of *All Saints Steyning*, otherwise called *All Hallows Steyning*, in the city of *London*, with the rights, members, and appurtenances thereof, and of and in all that messuage called *the parsonage-house*, with the appurtenances, adjoining to the parish-church of the said rectory, sometime part of the possessions of the dissolved monastery of *Saint Mary Grace*, near the *Tower of London*, and of all tithes, profits, and commodities to the said rectory belonging, by his letters patents, dated the seventh of *October*, in the fourth year of his reign, did grant the said rectory, &c. to *George Bingley* and *William Blake*. and their heirs for ever, to hold as of the manor of *East Greenwich* in

The grantee of the rectory of *Allhallows*, in *London*, ordered to pay a fee-farm rent, and to provide a competent minister for the church.

ATTORNEY
GENERAL
against
BEARCROFT.

free and common socage, reserving to the said king, his heirs and successors the yearly fee farm rent of eight pounds, the said *G. Bingley* and *W. Blake* finding, at their costs and charges, a proper person to serve the cure there, and to administer the sacrament in the said parish-church, &c. ; and being so seised, they, the said *George Bingley* and *William Blake*, by indenture of bargain and sale dated the twenty-third of *January* in the said year, enrolled in the high court of chancery, did give and grant the same to *Humphrey Bearcroft*, clerk, his heirs and assigns for ever ; by which said indenture he, the said *Humphrey Bearcroft*, did covenant with them to save and keep them, their heirs, and assigns, harmless against the said king, his heirs, and successors, of, for, or concerning all the rents, services, and charges before-mentioned from and after the date of the said indenture ; which said premises were descended and come to the said defendant as son and heir ; and that by virtue of the said letters patent and indenture, he, being the assignee in law, ought as well to have paid the said *fee farm rent* and found the chaplain as aforesaid ; but that the said defendant had not for several years past paid the same, nor provided a competent minister there, and yet did exact the tithes of the parishioners beyond the proportion that is by the statute to be paid, and leaves them to provide a minister at their own expence, contrary to the very institution of impropriations, and to the said covenant ; and thereupon he prayed that the said defendant might be enjoined to perform the same covenant.

The defendant
confesses the
covenant, but
says the inhabi-
tants had made
a subsequent a-
greement to
provide a mini-
ster themselves.

The defendant answered, and confessed the seisin of the king ; the letters patent, and the covenant therein contained ; and that the same was sold to his father and came to him at his death ; and that since his death he had performed the said covenant. The answer also stated, that the parishioners of the said parish had, from time to time, by several indentures of lease, taken to farm of him the said rectory, parsonage impropriate, parsonage house, and tithes until 1644, when they came to a further agreement with him to make choice of their minister during the term of their said leases ; and for that cause he had not made any provision for a minister for twenty years past ; and that he had paid the said fee-farm rent.

The attorney-general replied ; witnesses were examined on both sides ; and the cause came on to be heard.

Upon opening the pleadings, and reading the depositions taken, and the covenant in the said letters patent being agreed upon on both sides,

But the Court
ordered the de-
fendant to per-
form the cove-
nant.

IT WAS ORDERED by the Court, that the said defendant, his heirs, and assigns, shall yearly, and from time to time for ever, at his and their own proper costs and expences, find and provide one convenient presbyter or chaplain to serve the cure and to administer the word and sacrament within the said parish church
of

of *All Saints Steyning*, otherwise called *Allhallows Steyning*, and shall pay and bear all other charges, as well ordinary as extraordinary, out of the said rectory of *Allhallows*, arising or payable, or thereupon charged or to be charged from time to time for ever, according to the covenant in the said letters patents contained.

ATTORNEY
GENERAL
against
BEARCROFT.

W. STEELE, *Chief Baron*.

KIRKBY *against* REDHEAD and Others.

MICH. TERM,
7. CAR. 2.

Lancashire, 12th November 1655.

THE bill set forth, that the rectory of *Hawkeshead* is, and, time out of mind, hath been, A RECTORY IMPROPRIATE; that all tithes, oblations, and obventions, within the said rectory, and within the towns of *Hawkeshead*, *Nibthwaite*, *Graithwaite*, *Claitb*, *Cotton*, and *Saturwaite*, are belonging to the said rectory, and ought to be paid to the proprietor and farmer thereof; that the plaintiff is, and for seven years past hath been, owner and impropiator of the said rectory. and ought to have and receive the tithes thereof, great and small, and all oblations, obventions, Easter duties, rates, and all other duties and profits whatsoever yearly happening and renewing within the limits and titheable places thereof, as the other owners and proprietors have time out of mind received, in kind; but that nevertheless the defendants *Redhead* and *Rawlinson* had for several years denied and refused to pay their tithes and other duties, or to compound for the same; and that all the defendants in the said years had been occupiers of several parcels of lands in the said limits, and had several great and small tithes thereon, as in the said bill set forth, which they refused to pay *in kind*, under several pretences of customary payments, &c. The bill therefore prayed a full discovery of the same; of the quantities and values of the tithes; an account and satisfaction for them; and a quiet enjoyment thereof.

The tithes of
the rectory of
Hawkeshead, in
Lancashire, esta-
blished.

The defendants answered, and confessed the said rectory to have been time out of mind impropriate; that the towns, bailiwicks, and precincts aforesaid, did all lie within the said rectory; and that the tithes, as well great as small, arising, &c. therein, were sometime heretofore reputed as belonging to the said rectory: and the defendants *Redhead* and *Rawlinson* said, that all the lands, messuages, tenements, and hereditaments, situated within the said towns, &c. had been and were anciently, before the reign of KING JOHN, or before the council of *Lateran*, and during the reign of the said king, parcel of the lands and possessions of the late dissolved monastery of *Saint Mary of Furnes*, within the said county of *Lancaster*, and belonging to the same, and so continued till the thirty-first year of *Henry the Eighth*, and were then given to the crown, and to the said king, his

KIRKBY
against
REDHEAD
AND OTHERS.

heirs and successors, and were since, by other acts of parliament, annexed to and made parcel of the lands belonging to the crown in right of THE DUCHY OF LANCASTER ; and that the aforesaid monastery was freed and discharged from payment of any manner of tithes whatsoever ; which said privileges, &c. were also allowed, ratified, and confirmed by the laws and statutes of this nation, as fully stated in the said answer. All the said defendants fully set forth the letters patents in their said answers, by which the said lands and grounds descended to them ; and claimed the lands, &c. they held, to be exempt from payment of tithes ; and, as to other lands, they set up several customs in lieu of tithes, and set forth the values thereof.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides.

Now upon opening the pleadings, and upon long hearing and debate as well of the demands in the said bill as of the matters respectively insisted upon by the said defendants in their answer for their respective discharges from the payment of tithes, or of a *modus* or certain sum or composition in lieu of tithes,

The Court directed a trial at law, whether the lands are discharged of tithes.

IT WAS ORDERED AND DECREED by the Court, that, as touching the discharge insisted upon by *Redhead* and *Rawlinson* of being freed from the payment of any tithes whatsoever, for or in respect of the messuages, lands, and tenements used by them, or either of them, within the said rectory, or arising or yearly growing of or upon the same, it be referred to a *trial at law*, Whether the said messuages, lands, and tenements, by them held and used within the aforesaid rectory and the tithable places thereof, are and ought to be freed and discharged of and from the payment of all manner of tithes to the plaintiff ; by which action, against whichsoever of the said defendants, *Redhead* and *Rawlinson*, the same shall be brought, the other defendants shall be concluded. The equity of the cause to be reserved till after the said trial be had.

And IT WAS FURTHER ORDERED by the Court, that the defendants *Braithwaite*, and *Wilson*, shall account for and pay their tithes, *modus*, and ancient customary payments to the said plaintiff, as well for the time past as for the future ; and for the better ascertaining the same, the said plaintiff may take out a commission for that purpose.

The several *moduses* stated.

The answer, in setting out the *moduses*, stated, that the defendants and their ancestors, or those whose estates they then had, whereof tithes are demanded, having all customary lands, and, held by a customary estate of inheritance, from ancestors to hire, according to the custom of the manor of *Furnies*, had, by a prescription or

or custom, time out of mind, enjoyed the said messuages, lands, and tenements, and so ought to enjoy the same, free from the payment of any tithes of corn, grain, and sheaves in kind, by and upon the payment of several small sums of money for the several messuages, &c. in their possessions, as well for their ancient arable land, as for their lands lately improved and converted from pasture into arable, THAT IS TO SAY, the defendant *J. Wilson* by the payment of elevenpence halfpenny; the defendant *W. Braithwaite* one shilling and threepence; and *J. Braithwaite* two shillings and sixpence yearly for all their tithes of corn, grain, and sheaves whatsoever, growing upon their respective lands for seven years in the said bill charged; and that they, for all other tithes whatsoever, as well greater as lesser, had, by prescription or custom, time out of mind, used to pay the several sums following, THAT IS TO SAY, for every tenth lamb twenty-pence; and if but four lambs, then twopence; if five, tenpence; if six, and under ten, one shilling and sixpence: for milk; for every geld milch cow or hand milch cow, one penny, and for every muckett cow, twopence; for every calf, if but four calves and under, one penny; for every calf, if five calves, two shillings and sixpence; if ten, then five shillings: for bees; for every swarm under five, one penny; for five, three shillings and fourpence; if ten, then six shillings and eightpence: for pigs; for every pig under five, one half-penny; if five, then tenpence; if six, then one shilling and sixpence; if ten, one shilling and eightpence: for geese, whether many or few, twopence: for foals; for every foal, one penny: for ploughs; for every plough, one penny: for oblations; for every man and his wife, one penny yearly; for unmarried persons, for the first year, one halfpenny, for every year after until they be married, twopence: and for all other manner of tithes whatsoever (excepting wool), for every house sevenpence half-penny yearly; and that for wool they always used to pay the tenth fleece.

KIRKBY
against
REDHEAD
AND OTHERS.

Corn and grain.

Lambs.

Cows.

Calves.

Bees.

Pigs.

Geese.

Foals.

Ploughs.

In pursuance of the said decree, a commission issued, and was 5th May 1656. executed, and returned. Now upon reading the said decree, and the depositions returned,

IT WAS ORDERED by the Court, that it be referred to THE AUDITOR of the county of *Lancaster* to peruse and cast up how much hath been paid to the said plaintiff by the said defendants for their tithes, *moduses*, and customary payments aforesaid, and what is still due to him according to the values thereof, and to return his certificate to this court, so as the said cause may be further heard upon the said certificate.

The value of
the tithes to be
calculated by
the auditor.

Mr. Sadler, auditor of the said county, returned his certificate; and now upon reading the same and the said decrees, and upon hearing counsel on all parties,

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against
REDHEAD
AND OTHERS.

IT WAS ORDERED by the Court, that the said defendants shall forthwith pay to the said plaintiffs the several sums certified due to him for tithe wool, and for the tithes, *moduses*, and customary payments for the year and time in the said bill specified; and shall from time to time respectively pay the aforesaid *moduses decimandi*, and ancient customary payments and rate, and at the respective times mentioned, and shall respectively pay their respective tithes of wool in kind to the plaintiff for the time to come.

MICH. TERM,
8. CAR. 2.
17th Nov. 1656.

In pursuance of the said decree, an action was brought, and a verdict given for the said plaintiff.

Upon reading now the said *postea*, and hearing of counsel on both sides, and the defendant *Redhead*'s counsel alledging the said trial was had upon the plaintiff's evidence only, his witnesses not being present, and upon reading affidavits and hearing counsel,

New trial
granted.

IT WAS ORDERED by the Court, that a *new trial* be had accordingly, upon the said defendant paying to the plaintiff ten pounds costs towards the last trial.

EASTER TERM
9. CAR. 2.
26th April 1657.

A trial was had pursuant to the last order, and a verdict again passed for the said plaintiff, that the messuage, lands, and premises of the said defendant *Redhead* were not discharged from payment of tithes as aforesaid, as by the *postea* returned and produced in court appeared.

The plaintiff's counsel then desiring that the tithes of the defendant's messuages, lands, and premises aforesaid, and other the payments and duties aforesaid, might be ordered and decreed to be paid to the plaintiff in kind, or due satisfaction for the same, as by his bill prayed, and for a commission to enquire into the same, and no counsel appearing for the said defendant,

Present,
BARON NICHOLAS
and BARON
PARKER.

IT IS THUS DECLARED AND ORDERED, &c. by the Court, that the said tithes and duties of the lands, messuages, tenements, and hereditaments in the said defendant's possession or occupation for the seven years in the said bill mentioned, and in the said answer set forth, are payable, and to be paid, *in kind*; and that the same shall be forthwith paid and satisfied to the said plaintiff as well for the time past as for the future; and that a commission under the seal of this court shall be awarded for ascertaining the same.

TRIN. TERM,
9. CAR. 2.
17th June 1657.

In pursuance to the said decree a commission issued, and was executed, and returned into this court. Upon hearing counsel for the said plaintiff and defendant, and reading the decree and return of the commission and proofs, whereupon the value of the tithes of his corn is proved but of small or no value, yet it evidently appearing that the said plaintiff hath right to all the said tithes demanded by the bill,

It

IT IS ORDERED by the Court, AND DECLARED, that the said plaintiff hath right to the tithes and duties of the messuages, lands, tenements, and hereditaments, and other the premises in the said defendants possession or occupation, and by him enjoyed for seven years ; and that all and singular the said tithes and duties are yearly payable and to be paid in kind from time to time ; and that the said defendant shall duly set forth and pay to the said plaintiff all his tithes that have arisen and happened, or that shall hereafter arise and happen within the said rectory and places aforesaid, in kind, from time to time, in the years in the bill specified, and for the future.

KIRBY
against
REDHEAD
AND OTHERS.

NICHOLAS, *Baron.*

PARKER, *Baron.*

HILL, *Baron.*

HARTOPP, Knt. *against* Tookey, Clerk, and Another. MICH. TERM,
9. CAR. 2.
Leicestershire, 15th November 1655.

THE bill set forth, that whereas *Matthew*, then late *Bishop of Ely*, was, in right of his said bishoprick of *Ely*, lawfully seised to him and his successors of a yearly pension of three pounds six shillings and eightpence issuing out of the rectory of *Galby*, in the county of *Leicester* ; and that he, by indenture dated the 14th of *December*, in the fourteenth year of the late KING CHARLES, did demise to the plaintiff the aforesaid pension for three lives ; by virtue whereof the plaintiff was seised, and for divers years received the same of the then rector *T. Tookey*, the defendant's father ; that afterwards, the lands and possessions of the late bishop being by ordinances of parliament vested and settled in certain trustees to be sold, the inheritance of the said annual pension was purchased by some friends of the said plaintiff for him ; that nevertheless the said pension, for thirteen years past, had been in arrear and unpaid by the said defendant *Tookey's* father, and himself ; the said plaintiff not knowing of whom to demand the same, the aforesaid *T. Tookey* having the perpetual donation of the said rectory, and having made several conveyances thereof to the defendant *Whalley's* late husband, who claimed a title thereto. The bill therefore prayed a discovery and payment of the said pension, and the arrears thereof.

The defendant *Tookey* answered, and confessed that he was then rector there, but that in case the said plaintiff had a right to receive the said pension, he was not liable to pay the same, or any arrears thereof, for any longer time than he was rector there.

The plaintiff replied ; and the cause descended to issue ; and witnesses were examined.

The cause came on to be heard this day.

C 4

And

HARTOPP
against
TOOKEY
AND ANOTHER.

And the Court DECLARED, ORDERED, AND DECREED, that the said rectory, in whose hands soever the same is and remaineth, is liable to the payment of the said pension, and of the arrears thereof; and that the said defendant *Tookey*, now rector of the said rectory, shall pay and satisfy to the plaintiff, for the arrears of the aforesaid pension due and incurred at the time of exhibiting this bill, the sum of twenty pounds, with five pounds for his costs; and that the said defendant shall likewise pay and satisfy to the said plaintiff for the future, as the same shall grow due and payable during the time as he shall continue rector of the said rectory.

STEELE, *Chief Baron.*
NICHOLAS, *Baron.*

TRIN. TERM,
8. CAR. 2.

STAVELEY against ULLITHORNE and Others,

Yorkshire, 24th June 1656.

Lands in *Stenningforth*, in *Yorkshire*, discharged of tithes, as having belonged to the *Cisterians*.

S.C. Stiles, 411.
422.

S.C. Hard. 101.

See other causes,
Mich. 6. Car. 2.
and Hil. 16. Car.
2. and Easter,
18. Car. 2. and
Hil. 29. Geo. 2.
and Hil. 20.
Geo. 3.

THE bill set forth, that the late KING JAMES being seised in fee, in right of his crown of *England*, of and in the prebend of *Studley*, belonging to the collegiate church of *Rippon*, and of all the tithes of wool and lamb arising, &c. within the townfields and territories of *Stenningforth*, parcel of and belonging to the said prebend, by his letters patent, dated the twenty-eighth of April, in the sixth year of his reign, did give and grant unto *F. Phillis* and *R. Moore* and their heirs, in fee farm, the prebend of *Studley*, and all and singular the tithes of wool and lamb arising, &c. within the townfields of *Stenningforth*, at the yearly rent of twenty-six pounds eleven shillings and threepence; by virtue whereof they became lawfully seised of the said prebend and of the tithes of wool and lamb; that they, by deed inrolled in the court of common pleas within six months after the date thereof, according to the statute, did grant, bargain, and sell unto *Sir William Ingilby, Knight*, and *T. Ingilby*, and their heirs (among other things), all and singular the said prebend of *Studley*, and the tithes of wool and lamb as aforesaid, who became lawfully seised thereof to them and their heirs for ever; which said estate afterwards came to and was vested in *William Ingilby*, nephew of *Sir William Ingilby*, and his heirs, who entered thereon, and became lawfully seised thereof in his *demesne as of fee*; and being so seised, he, by indenture of demise, dated the tenth of October, in the eighth year of the reign of the late KING CHARLES, for the considerations therein mentioned, demised to *Bassett Staveley*, deceased, his executors, &c. all the said tithes of wool and lamb, and all other tithes whatsoever, coming, &c. within the townfields and territories of *Stenningforth* as aforesaid (the tithes of mines and quarries only excepted), to hold the same for twenty-one years; by virtue of which he entered into the said tithes and premises, and did receive and take a good part of the said tithes; that

that in *May* 1646 the said *Bassett Staveley* died intestate, possessed of the same; after whose death the plaintiff had letters of administration granted to him, and as administrator became possessed of the said lease for the remainder of the said term; that the defendants for the last seven years, living within *Stenningforth*, had subtracted their respective tithes, of which part was due to the plaintiff as administrator. The bill therefore prayed an account of their tithes of wool and lamb, and a recompence for the same.

STAVELEY
against
ULLITHORNE.

Prayed an account of wool and lamb.

The defendants answered, and said, that they are and ought to be cleared and discharged by law for their respective lands and tenements of the payment of any tithes; for that the lands they respectively stand seised of to them and their heirs, were parcel of the possessions of, and were belonging to, the *Abbot of Fountains*, and were vested in that abbey before the second council of *Lateran*; which abbey was of the *Cistercian order*; and that all the lands and possessions of the said abbey, coming to the crown by a statute made in the thirty-first year of *Henry the Eighth*, were and ought, by the said order and statute, to be discharged of and from the payment of all manner of tithes in the owner's hands, in as large and ample manner as the abbot held the same discharged; and that, the said defendants claiming and deriving their title from the crown, the inheritance of the said lands, by force of the said order, ought to be discharged from payment of all tithes for those lands during such time as they hold the said lands in their own hands and possession; that although the defendants, the *Ullithornes*, did pay their tithes to the said *Bassett Staveley* for some two years, yet if they ought to be discharged, those payments have not prejudiced them, as they conceive; and that the defendant *Atkinson* did never pay any tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

Upon opening the pleadings, and on debate of the matter,

IT IS ORDERED by this Court, that, as concerning the discharge insisted on by the defendants, it shall be referred to a *trial at law* upon the usual terms; the issue to be, whether the messuages, lands, and grounds the defendants hold in *Stenningforth*, parcel of and belonging to the *Abbey of Fountains*, be discharged from payment of tithes by the *Cistercian order*, in such manner as the same is set forth in the answer, or not?

Which trial was accordingly had, and a verdict thereupon passed for the defendants.

TRIN. TERM,
9. CAR. 2.
15th June 1657.

In pursuance of an order dated the tenth of *February*, a new trial was granted, to be had at the bar of this court, by a jury of the

10th Feb. 1657.

STAVLEY of the county of *York*; which trial was also had, and a verdict
against
ULAITHORNES. given for the defendants (a).

The cause coming on for further directions, upon reading the said orders and verdicts, the counsel for the defendants desiring that the bill might be dismissed,

IT IS ORDERED by the Court, that the said bill, and the said defendants, be absolutely dismissed this court.

(a) The action appears to have been debt on the statute 2. Edw. 6. c. 13. S. C. Stiles, 411. 422. ; and the Court was of opinion, that the order of the council of *Lasteran*, which freed the *Cistercian* order from the payment of tithes, was a general law received in *England*; and, if these lands were discharged of tithes from the time of that council, that no after covenant or contract made by the abbot to pay tithes could dispense with this privilege, or

make them liable to tithes; for once discharged by this council, and always discharged; for this council is as forcible as an act of parliament, which concludes all parties: and the Court were also of opinion, that if there were any such agreement for payment of tithes before the council, yet this council, as a general law which includes all men's consent, had dissolved it, and the lands were discharged. S. C. Hard. 101.

HILARY TERM
 8. CAR. 2.

STEELE, Knt. and Others, *against* **HITCHCOCK and Others.**

Wiltshire, 29th January 1656.

The tithes of
 lands lying
 within the Forest
 of *Savernack*, in
Wiltshire, esta-
 blished.

THE bill set forth, that the plaintiffs, by two several acts of parliament and an ordinance, became seised, amongst other things, of all the tithes within the forest of *Savernack*, lately belonging to the late *Dean and chapter of Sarum*; and that the defendants, being possessed of divers arable lands, meadows, and pastures within the said forest, have refused to pay their great and small tithes to the plaintiffs; the defendant *Hitchcock* claiming the same. The bill therefore prayed a discovery of the values and tenths; an account and satisfaction for the same; and to quiet the plaintiffs in the receipt of the said tithes.

The defendants *Gamon* and *Sawyer* answered, that they were for two years occupiers of land lying in *Savernack Park*, which is next adjoining to the said *Forest of Savernack*, and do believe it hath been anciently accounted parcel, and within the liberty of the said forest; and that for the tithes of all the said lands, other than such lands as are not chargeable because of improvement, having been barren lands, for seven years not yet expired, they have compounded with the defendant *Hitchcock*, the owner of the parsonage of *Presbutt*, within which parish the said lands are reputed to lie, and had paid him the same. The defendant *Hitchcock* confessed the receipt of the several sums of the said defendants, and averred that he hath good title thereunto, as farmer, for the term of his life, of the rectory of *Presbutt*, within which parish the said lands lie, by lease, dated the twenty-seventh of

July, in the eighth year of KING JAMES, and made by the *Dean and chapter of Sarum* to his father and assigns for three lives, and that as eldest son he became intitled thereunto.

STEEL
against
HITCHCOCK.

The plaintiffs replied ; the defendants rejoined ; and witnesses were examined on both sides.

Upon opening the pleadings, and hearing of counsel, and reading of several ancient grants and records, and depositions, the Court conceived the cause fit to receive a *trial at law*, "whether the defendant *Hitchcock* hath a right to the tithes arising and growing due out of the lands in the occupation of the said defendants *Gamon* and *Sawyer*, lying in *Savernack Park*."

A trial was accordingly had at the bar ; and the cause coming on to be heard on the equity reserved, it appeared by the verdict given for the said plaintiffs, that they have right to the tithes in question. 6th May 1657.

IT WAS THEREUPON ORDERED by the Court, that the defendants *Gamon* and *Sawyer* shall severally pay to the plaintiffs the several values of tithes mentioned in their answer due for the said years, and shall continue the payment thereof so long as they shall continue to occupy the said lands ; and that the defendant *Hitchcock* shall suffer the said plaintiffs to enjoy the same without any further molestation or interruption, unless he can shew cause to the contrary. EASTER TERM 9. CAR. 2.

But no cause being shewn, the decree was made absolute on the twentieth of May. 10th May 1657.

LOUGH, Clerk, against CHAPMAN.

HILARY TERM
8. CAR. 2.

Somersetshire, 5th February 1656.

THE bill stated, that *J. Boden*, clerk, was, by an order of the committee for plundered ministers, settled rector of *Peter and Paul*, and other churches, in the city of *Bath*, with the chapel of *Whitcombe* annexed, to officiate the cure in the stead of *J. Masters*, clerk, the late incumbent ; which said rectory did stand sequestered from the said *J. Masters* for his delinquency : that the said *J. Boden* having deserted his charge in June 1647, the plaintiff was appointed to officiate there, and for his maintenance to have all the houses, glebe lands, tithes, rents, revenues, and profits of and belonging thereto ; and that he entered thereupon, and hath since duly officiated there ; by reason whereof he became intitled unto the same, and enjoyed all the tithes, as well great as small, as well as his predecessors, had from time beyond memory ; that all farmers of land, meadow and pasture, and all other the inhabitants of the said parish and chapel had yearly paid to the plaintiff's predecessors their several The tithes belonging to the rectory of St. Peter and St. Paul, in the city of Bath, etc. bishop.

LOUGH
against
CHAPMAN.

several tithes in kind, and so ought to continue them ; that the defendents being all of them inhabitants of *Whitcombe*, or occupiers of lands there, minding to defraud the plaintiff of his tithes, detained, and refused to pay him any composition for the same. He therefore prayed that they might set forth their quantities and values, and account for the same ; and that he might be quieted in the same for the future.

The defendants alledged, that *Whitcombe* is a distinct parish of itself, generally known by the name of the parish of *Lincombe* and *Whitcombe*; that the said places have of themselves churchwardens, overseers of the poor, and other officers, as other parishes use to have ; that within the said parish there is a particular rectory or parsonage impropriate ; and they believe, that the parson or parsons thereof for the time being ought to have the chauntry house and barn, the tithes of sheave corn, hay, wool, lamb, and other tithes, within the said parish of *Whitcombe*, and are liable to pay their tithes to *the parson*, and not to *the vicar* ; and traverse the general payment of tithes, great and small, to the vicar.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined on both sides.

A copy from
Doomsday
Book, and a
composition,
read in evidence.

Upon opening the pleadings, and upon reading a copy taken out of the *Doomsday Book* remaining in the exchequer, it appeared, that the church of *Bath* held *Lincombe* ; and also on reading a copy of a composition made in *February* 1322, by *JOHN*, then *Bishop of Bath and Wells*, between the prior and convent of the church of *Bath* and the vicar of the church of *Saint Mary Stalls*, in *Bath*, and the chapel of *Whitcombe* depending on the same church, whereby the said bishop did settle that the then vicar and his successors which should be then after vicars in the said church of *Stalls*, should, among other things, have the tithe of the whole wool of the parishes of *Whitcombe*, *Lincombe*, and *Berwick*, and the tithe of the whole hay of the said parishioners, and also the tithe, of milk, geese, pigs, eggs, pigeons, pullets, flax, hogs, orchards, calves, and the tithe of kine. and all manner of oblations and obventions coming of the said chapel of *Whitcombe* and of the parish of the same whatsoever ; and also on reading a copy of a record remaining with the remembrancer of the first fruits and tenths touching the annual value of benefices and spiritual promotions in the said county of *Somerset* in the time of *Edward the Sixth*, whereby it appeared, that the vicarage of *Stalls*, with the chapel of *Whitcombe* annexed, and the rectories of *Saint James* and *Saint Mary* and *Saint Michael* are united, and called the rectory of *Saint Peter and Saint Paul*, in *Bath* ; and likewise on reading the copy of certain letters patents made by *QUEEN ELIZABETH*, on the twenty-first of *November*, in the fifteenth year of her reign, whereby she granted to the mayor and citizens of the city of *Bath*, and their successors for ever

Copy of a re-
cord in the First
Fruits Office
read.

Letters patents
read.

(among

(among other things), the advowsons and right of patronage of the parochial vicarage church of *Stalls*, in the said city of *Bath*, with the chapel of *Whitcombe*, in the said county, to the same vicarage church of *Stalls* annexed; also upon reading the depositions of several ancient witnesses, who did declare in their depositions that the rectors or impropriators and the vicars did belong to the said chapel of *Whitcombe*, that is to say, that the parson or impropriator hath all the tithe of corn and lambs (except out of such grounds as are tithe free) as, namely, *the Upper Hayes*, *Sydenham Meades*, and *Beechincliffe*, and the parks and lawns above that; and the parson or rector some tithe wool of sheep fed upon certain lands belonging to the said hospital of *Saint Mary Magdalen* and *Martynbole*; and that at sheer-time the occupiers of *Martynbole* did put all the sheep into a fold kept in *Whitcombe*, and let run about sixty sheep, of which the parson or rector had tithe wool in lieu of all the rest; but in later times the occupiers of *Martyn's* land have paid a composition for the tithe wool; that the parson hath all the tithe hay of *Lincombe Farm*, except of one parcel of mead in *Dolemeade*, containing three acres, called *the Mill Mouth*, whereof the vicar hath usually taken tithe; and the parson hath the tithe hay of a parcel of ground in a close called *Ofield*, which parcel containeth five acres, bounded by a meare; and of about two acres, lying in the bottom of the moor, belonging to *Mr. Bigg's* inn; and of one parcel of ground in a close lying in the moor belonging to *Colthurst* teneiment; and the tithe hay of a close about five acres called *Broad Close* or *Fook's Ground*, and of a ground called *Hay Corner*, and of one close called *Bigg's Mead*, containing two acres; and also of one close, containing two acres; and of one close, containing about one acre, in *Colthurst West Mead*; and of a close adjoining to *Colthurst's* house, and one half of the tithe hay of the *Widow Gibbs'* croft, and the vicar hath the other half; and the tithe of three or four swaths of hay in *Dolemead* under the upper hedge, and about four swaths by the lower ditch next to *Bathwicke*; and that the vicar hath all the other tithes in the said parish of *Whitcombe*.

LOUGH
against
CHAPMAN.

Depositions of
ancient wit-
nesses read.

The special
manner of tith-
ing in certain
places stated.

And after long debate concerning the matters in question; forasmuch as it evidently appeared to the court here that the plaintiff hath just right and title to the said tithes complained of by his said bill which are mentioned as due to the vicar in the composition aforesaid, and in the schedule to the bill annexed;

The plaintiff's
right proved.

IT IS ORDERED by the Court, that the said defendants shall forthwith pay to the plaintiff all their several tithes by them detained and withheld from him, and complained of by his said bill, and in the said composition and schedule annexed.

The decree.

And

LOVER
against
CHAPEMAN.

And it is referred to the auditor of the said county to cast up the same from the proofs, and to have a commission if he thinks fit.

NICHOLAS, *Baron*.
PARKER, *Baron*.

20th June 1657. The auditor returned his certificate ; which was confirmed by the Court ; and payment ordered accordingly.

EASTER TERM
7. CAR. 2.

WILES *against* SMITH.

Lincolnshire, 20th April 1657.

The tithes of
certain hamlets
in the parish of
Sibsey established.

See post. the
case of *Ellis v.*
Saul, Hilary
Term, 30. Geo.
3. ; and S. C.
reported by An-
struther.

THE bill stated, that the plaintiff, by descent from his father deceased, was lawfully proprietor and owner of all manner of tithes, both small and great, arising, &c. within the villages, hamlets, and places called *the Frith*, otherwise called *the Firth*, and of *Earls Stock*, otherwise called *Earls Crofte*. in the parish of *Sibsey*, and the grounds, fields, precincts, and titheable places thereof ; that by an act of parliament made 2. & 3. *Edw. 6. c. 13.* IT WAS ENACTED, “ that all and every the persons which had or should have any beast or other cattle titheable, going, feeding, or depasturing in any waste or common ground whereof the parish was not certainly known, should pay the tithes for the increase of the said cattle so going in the said waste or common to the parson, vicar, proprietor, portionary, owner, or other their farmers or deputies of the said parish, hamlet, town, or other places, where the owner of the said cattle inhabited or dwelleth ;” also that the plaintiff, as proprietor and owner of the said tithes, ought to have and receive the tithes of all hay and corn, and the small tithes, of all the inhabitants within the villages, &c. aforesaid, arising therein, whereof the parish is not certainly known ; and that, by ancient usage time out of mind, the aforesaid tithes had been and ought to be always paid to, and received and taken by, the proprietors and owners for the time being of the said tithes, part in kind, and other part after a customary rate, NAMELY, for hay, in kind ; a composition rate of fourpence a piece for the milk of every cow ; one penny a piece for every calf and for every foal ; for every sheep sold before clipping threepence ; and for every sheep bought in by any inhabitant after *Candlemas* one penny ; which tithe, rates, and payments had been duly paid to the said plaintiff and his ancestors, or those under whom he and they claimed, by the inhabitants of the villages, &c. aforesaid ; that the defendant had been for several years past an inhabitant within the said hamlets, &c. and had growing therein divers acres of meadow, and had in his keeping divers sheep, cows, mares, cattle, and poultry, of all which he had received an yearly increase, and converted the same to his own use, for which he ought to have paid the plaintiff his said tithes, and the composition rates due for the same ; but which he

he refused to do ; and also had kept, fed, and depastured, within the common fens called *Witmore* and *Earls Fens*, being out of all parishes, several ewes and lambs, the tithes whereof, and of the wool, amounted to four pounds yearly, and several other sheep within the titheable places aforesaid, all which were clipped or sheared during the time of their depasturing there, the tithe amounting to five pounds ; and also had cows, calves, mares, and foals, fallen yearly within the titheable places aforesaid ; and the said defendant had cut and mowed several acres of meadow in the titheable places aforesaid, and carried away and converted the hay to his own use, besides several other small tithes, the tithes whereof amounted to a large sum. The bill therefore prayed a discovery and satisfaction for the said tithes.

WILLIS
against
SMITH.

The defendant denied the plaintiff's title, and also that the aforesaid places were in the parish of *Sibsey*, or that any of the lands, &c. which he occupied, &c. are within the said parish : he also denied the ancient custom, as stated in the bill, of paying part in kind, and part after a composition ; and alledged another custom, " that time out of mind, within the said place called *Furthbank*, sixpence an acre was to be paid for tithe hay, and that the same ought not to be paid in kind ;" and that he held land therein ; and set forth his titheable matters within the said parish and out of it, and their values.

The defendant denies that the place where is within the parish, and states a *modus*.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides.

When after long debate, and hearing counsel on the twenty-sixth of *January* last,

For that the said defendant by his answer had denied, that the place where he inhabited lies within the parish of *Sibsey*, or any the titheable places thereof, and had set forth a special custom for payment of tithe hay as aforesaid,

IT WAS ORDERED, that it should be referred to a *trial at law* A trial directed on both the said issues, and the equity be reserved.

And the Court being afterwards informed by the plaintiff's counsel, that the said defendant had by his answer also confessed the depasturing cows, calves, sheep, foals, and other things in *West Fenn*, denying only the said fen to lie within the parish of *Sibsey*,

It was on the thirtieth day of *January* last FURTHER ORDERED BY THE COURT, that in the aforesaid action should also be tried, Whether *West Fen* or *Earls Fen*, and *Wildmore Fen*, did lie within any parish or not ?

An action was brought, and a verdict passed for the plaintiff Verdict for the upon the two first issues : FIRST, That the place called *the Frith*, plaintiff.

or

WILKS
against
SMITH.

or *Firth*, or *Furthbank*, where the said defendant doth inhabit, doth lie within the said parish of *Sibsey*; **SECONDLY**, that the defendant did not prove the special custom that sixpence by the acre is only due and payable and ought to be paid by the owners and occupiers of the meadow ground and pasture within *the Frith, Firth, or Furthbank* aforesaid, for the tithe of the hay cut down and carried away from time to time of or from the said meadow-ground or pasture-ground to the owner or proprietor of the tithes of the ground aforesaid, as by his answer he had alledged.

Third issue.

Upon **THE THIRD ISSUE** it was found generally, that the said fens called *Earle's Fenn*, or *West Fenn*, and *Wildmore Fenn*, do lie in some parish, but in what parish or parishes the jury are uncertain.

And upon reading an exemplification of a decree of this court, made in *Trinity Term*, in the twenty-sixth year of *Queen Elizabeth*, *Hutchinson v. Robinson*, concerning the tithes of *Frith* aforesaid, thereby declared and decreed to be paid to the portionary or owner of the aforesaid portion of tithes, and also for their cattle depasturing and feeding in *Wildmore Fenn* and *Earle's Fenn* aforesaid.

And upon hearing of counsel,

Opinion of the
Court on the
evidence.

Forasmuch as the Court, upon the trial of the two first issues and verdict thereupon, is fully satisfied of the plaintiff's right to the tithes from time to time arising and renewing within the place called *the Frith, or Firth, or Furthbank*, and the titheable places thereof, as owner or portionary of the said tithes; and that there is no such custom there of the payment of sixpence by the acre for the hay cut and carried away from meadow-ground or pasture-ground within the said place; and for that the said plaintiff's counsel did declare in court, that they were willing to waive, and did on the plaintiff's behalf waive, the praying any decree concerning the tithes of the defendant's sheep depastured in *West Fenn*, upon which the third issue tried as aforesaid was doubtful whether it passed for the plaintiff or against him, by reason of the generality thereof;

The Decree.

IT WAS ORDERED BY THE COURT, that the plaintiff hath right to the tithe of the hay of the meadow grounds cut by the defendant in the said years, and to the other customary tithes for cows, calves, and foals, confessed by the said answer to have been kept at *Furthbank* aforesaid, and to all other tithes payable by the defendant, and renewing during the said years, of any other goods or cattle kept or depastured by him upon the lands or grounds lying at *Furthbank* aforesaid, or within any the titheable places thereof. And for that the values of the tithes to be paid doth not at present appear certain, a commission is ordered for proving the same, if the plaintiff require it.

Upon

Upon reading the said commission returned, and hearing of counsel,

WILLES
against
SMYTH.

IT IS ORDERED BY THE COURT, that the said defendant do pay ^{24th Nov. 1657.} to the said plaintiff two pounds, four shillings, and threepence for his tithe hay, and for milk, and for sheep fed and depastured on the *Furthbank*.

NICHOLAS, *Baron*.
PARKER, *Baron*.

BRITTAINE, Clerk, *against* Lord COVENTRY.

TRIN. TERM,
9. CAR. 2.

Gloucestershire, 17th June 1657.

THE plaintiff, as vicar of the church of *Bisbley*, in *Gloucestershire*, exhibited his bill, shewing, that the parsonage of the said church is a *rectory impropriate*, and held and enjoyed by the defendant *Lord Coventry*; that within the said parish there is an ancient vicarage by an ancient ordination or composition endowed with an ancient house, and with all the oblations and obventions within the said parish; the small tithes called *minuta decimæ* of the said parish; the tithes of corn, wool, and lamb of all the lands called *the manor of Worlands*; the herbage of the church-yard; the tithes of hay, lamb, and wool, besides that of *Worlands*, throughout the whole parish; and the tithe of the tithe of corn belonging to the said *Lord Coventry*, which are to be retithed; that the plaintiff and his successors should have and receive all the said tithes and retithing of the tithes aforesaid, for which they are to officiate in the cure, and to bear all burthens and charges, saving synodals and wine to be communicated to the people at the sacrament, which the said *Lord Coventry* at his costs is to pay for and provide; that the parish of *Bisbley* is a great parish, and hath within it divers chapels of ease, and consisteth of a great number of communicants; that the gift of the said vicarage hath always been and still is in the crown; and that he, the plaintiff, about twenty years since, was lawfully presented, &c. thereto, and doth continue vicar thereof, and is accountable for the first fruits and tenths; that the defendant *Lord Coventry* doth endeavour to infringe on the said plaintiff's right to the said tithes, by letting leases thereof to the other defendants, by reason whereof the plaintiff cannot have the retithing of the tithes of corn, the same not being tithed; that the parishioners and inhabitants of the parish having compounded with the said defendant or his lessees or farmers, set not forth any of their said tithes; but that he receives the whole benefit thereof, and the plaintiff is disabled to pay his tenths and first fruits: and thereupon he prayed relief of the court.

The Endow-
ment of the vi-
carage of *Bisbley*,
in *Gloucestershire*,
and the tithes
thereto belong-
ing, established.

BRITTAINE
against
LORD
COVENTRY.
The defendant,
Lord Coventry,
owner of the
manor and rec-
tory of Bisbley.

The defendant, *Lord Coventry*, answered, and said, that he is, and for twenty years past hath been, owner of the manor and rectory of *Bisbley*, and of all the tithes thereunto belonging; that he knows not whether there be any ancient vicarage therein; and denies that, in right of the said rectory, he hath ever claimed any lands, tithes, and other duties but such as of right belong to him (besides such part and proportions as belonged to the plaintiff); but he confesses, that for several years past the plaintiff hath held the curacy or vicarage aforesaid, but by what right he knew not; and says, that he doth not hold any part of the said rectory or lands in his hands, but leases the same, and whether the tenants had or had not permitted the plaintiff to receive the said tithes he knew not. He also denied that he let the said rectory for three hundred pounds *per annum*, being charged with several yearly payments, and a fee-farm rent of thirty-three pounds *per annum*; and all knowledge whether the said rectory and curacy were anciently within the diocese of *Worcester*, but believed it did heretofore belong to the college of *Stoke*, near *Clare*, in the county of *Suffolk*, before the dissolution of monasteries. He further says, that the plaintiff's four predecessors did never receive or claim more than the fifteenth part of the tenth of the tenth or tithe for corn, hay, wool, and lambs, and the whole tithe corn of the glebe land or land belonging to the said rectory, and two parts yearly of the *Easter book*, or *else* all the *Easter book*, and the then rector received the whole of the *Easter book* the third year. He also confessed, that the said parish was very large, but knew not of divers chapels of ease in the said parish; but believed that there is one church or chapel of ease in the town of *Stroud*, and that some allowance is yearly given by the said defendant to the minister there; that he knew not whether the gift of the said vicarage had always been in the crown, or whether the plaintiff was lawfully inducted, &c. therein; and denied that he infringes on the plaintiff's right. He also confessed that he had made several leases to the other defendants, but knew not whether he or his tenants have or ought to find the communion wine, but believed all is provided on his part which he ought to provide.

The other de-
fendants were
tenants to Lord
Coventry.

The other defendants put in their answers as tenants to the defendant *Lord Coventry*, and, admitting the plaintiff to be vicar; alledged, that they have not neglected at any time to set forth the tithes which belong to the said plaintiff.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

The cause came on to be heard in last *Easter Term*, when it was referred to the defendant *Lord Coventry* to settle the differences between the parties without prejudice. But as the refer- did not take place,

The

The cause now came on again ; and upon reading the order of the ninth instant, and of the composition, ordination, or endowment of the said vicarage, extracted out of the registry of the bishop of *Worcester*, and also the depositions taken in the cause,

BRITTAINE
against
LORD
COVENTRY.

THE COURT declared, that they were satisfied of the validity of the said composition, ordination, or endowment ; and therefore ORDERED, ADJUDGED, AND DECREED, that the plaintiff shall, for ever hereafter, have all the tithes of wool and lamb, the *Easter* book, and all and singular the *minute tithes* of and within the said parish of *Bisbley*, and the titheable places thereof, and all and singular other the tithes, retithings, and profits whatsoever mentioned and expressed in the said composition, ordination, or endowment, according to the purport, true intent, and meaning of the same ; and to the end the plaintiff may hereafter, for the time to come, have, hold, and enjoy all such tithes, as are or shall be due to him, of the corn and hay coming, growing, and renewing within the said parish and the titheable places thereof in kind, the defendant and parishioners are hereby ordered to set forth their tithes ; and the said *Lord Coventry*, his tenants and farmers, are to retithe, and set apart the tenths of the tithes so set out, to the intent the plaintiff may duly take and carry away the same ; and lastly, it is referred to the auditor of the said county (who is to have a commission) to examine and cast up the value of the tithes, retithings, and all other dues which the said plaintiff ought to have received since his induction into the said vicarage of *Bisbley*, and to return his certificate to the Court.

The Court of
opinion, that all
the tithes and
re-tithings be-
long to the
plaintiff.

The auditor returned his certificate ; and upon reading the same, and the said decree,

MICH. TERM,
9. CAR. 2.
10th Nov. 1657.

IT IS ORDERED BY THE COURT, that the defendant *Lord Coventry* shall forthwith satisfy and pay to the plaintiff the arrears of the said tithe of wool and lamb arising within the said parish and parsonage of *Bisbley*, and detained from the plaintiff since his institution, being fifteen years in arrear, amounting to six hundred pounds, at the yearly sum of forty pounds, as the said tithes appear to be worth by the said proofs and the auditors certificate.

The defendant,
Lord Coventry,
decreed to pay
600l. for arrears
of tithes.

NICHOLAS, *Baron*.
PARKER, *Baron*.
HILL, *Baron*.

THOROWGOOD, Knt. and Others, against QUANTER and Others.

MICH. TERM,
9. CAR. 2.

Herefordshire, 30th November 1657.

THE plaintiffs were trustees, among others, for ministers maintenance and other pious uses ; and being, by virtue of the act and ordinance, seised of the tithes of the impropriate rectory of *Dilwyn*, in *Herefordshire*, established.

THOROWGOOD
AND OTHERS
against
QUANTER
AND OTHERS.

Dilwyn, formerly belonging to the late *Bishop of Hereford*, they, by indenture dated the first of *February* 1654, granted all the said tithes to the plaintiff *E. Stephens*, to hold for six years, at one hundred and fifty pounds a year; by virtue thereof the said *E. Stephens* became intitled to receive the said tithes, which the defendants refused to pay, under pretence of a lease from the said *Bishop of Hereford*. The bill stated, that if the defendants had any such lease, it was either surrendered or become void in law long since; that the said defendants, for divers years past, have gathered, and still do gather and receive all the said tithes, whereby the said trustees are disabled to perform their trusts, and the plaintiff *E. Stephens* is deprived of the benefit of the said lease, and disabled to pay his rent; and prayed, that the said defendants might answer the premises, and set forth whether they have any deeds or leases and writings which belong to the plaintiff, and that they may deliver the same, and set forth quantities, kinds, and values, and other particulars of the said tithes by them received since the lease made to the plaintiff *E. Stephens*, and since the same were vested in the plaintiffs, the trustees, and give *E. Stephens* the plaintiff a satisfaction for the same; and that the respective interests may be established in the said plaintiffs.

The defendants
rely on a lease
for three lives
made to *R.*
Baxter,

and assigned by
him to *R. Ro-*
boham, at the
three persons
should so long
live,

whose heir as-
signed the same
to the defendant
Quanter.

The defendants appeared and answered; and the defendant *Quanter* set forth, that *FRANCIS, Lord Bishop of Hereford*, being seised of the said rectory, by deed, dated the second of *October*, in the seventeenth year of *KING JAMES*, did grant to *Richard Baxter*, his executors, &c. the rectory of *Dilwyn*, together with the tithes, barn, and all tithes of corn, grain, and hay, and all tithes whatsoever in *Dilwyn, Newton, Luntley, Over Chadnor, Neither Chadnor*, and many others, to hold during three lives, at the yearly rent of thirty-two pounds; that the said *R. Baxter* entered; and being thereof possessed, did, by deed of assignment dated the twenty-ninth of *May*, in the eighteenth year of the said king, assign the said rectory and tithes to *R. Robotham*, to hold for ninety-nine years, if the lives mentioned in the lease should so long live; that he being, by virtue of the said assignment, possessed of the premises, died about six years ago, and the interest became vested in *Frances* his wife and *Charles* his son; who being possessed thereof, they, with *J. Heaven* (who claimed some interest therein), by deed dated the fifteenth of *June* 1650, did also assign to *F. Quanter* (the defendant's trustee), and to whom the said last assignment was made in trust, did enter upon the premises; and he confessed that he had in his custody the said original lease, and all other the said meane assignments.

The other defendants answered, and confessed the said last-mentioned assignment to the said *F. Quanter* in trust for the defendant *F. Quanter*, and that they helped, as defendant's servants and agents, to gather several quantities of tithe, corn, grain,

grain, and hay, for several years, but claim no tithe thereunto themselves. THOROWGOOD
AND OTHERS
against

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came to a hearing on the thirtieth of *April* last, when IT WAS ORDERED, that the said cause should be referred to a *trial at law* in an action to be brought by the said plaintiffs against the defendant *Quanter*, to prove that the said lease, mentioned in the answer, dated and made as above, was surrendered to the said late bishop by the said *Baxter* and *R. Robotham* and his assigns, before the tenth of *November*, in the fifth year of the late *King Charles*. A trial at bar was accordingly had: But the Court being of opinion, that the said *Robotham* and the other assignees could not by law surrender the said lease, they deriving an interest under the said lease made to *Baxter*, the said plaintiffs became nonsuited; and a new trial was granted upon the tenth day of *June*, wherein the issue was directed to be, whether the said lease was surrendered by any actual surrender or by any surrender in law; on which trial a verdict passed for the said plaintiffs upon full evidence on both sides. QUANTER
AND OTHERS.
An issue directed to try, whether the lease to the defendant was surrendered; and a verdict found thereon in favour of the plaintiffs.

The cause now came on for further directions upon the equity reserved; and upon much debate thereof had,

IT WAS ORDERED AND DECREED by the Court, that the possession of the said tithes of the said rectory of *Dilwyn* shall be established with the said plaintiff *E. Stephens*, his executors, &c. for and during the residue of the said term granted to him by the said other plaintiffs; and after the expiration of the said term, that neither the said defendant *Quanter* nor his agents, nor any claiming for, by, from, or under him, shall interrupt or molest the said plaintiffs or their assigns in the receiving and gathering of the said tithes; and that the said *Quanter* shall deliver up to the said plaintiffs the said lease dated the second of *October* as aforesaid to be cancelled, the same being found by the said verdict to be surrendered; that the said defendant *Quanter* shall satisfy and pay to the said plaintiff *E. Stephens* the profits by him or by his servants, agents, or tenants, made and received, which did arise, happen, or grow due, between *Saint Michael* 1654, from the commencement of the said plaintiff's lease; and also, that the said defendant shall pay to the plaintiffs, the trustees, the profits received by him, &c. which did arise or grow due out of the said tithes from and after the death of *F. Robotham*, late wife of *Dr. Robotham*, until *Michaelmas* 1654. The payment of the tithes decreed to the plaintiff.

PARKER, Baron.

HILL, Baron.

MICH. TERM,
9. CAR. 2.

SHEFFIELD, Clerk, *against* PIERCE and Others.

London, 12th November 1657.

The statute
37. Hen. 8. c. 12.
f. 19. respecting
tithes in the city
of *London*,
pleaded to a
bill in equity
for the tithes of
the parish of
St. *Switbin's*;
and the plea
over ruled.
Cro. Eliz. 276.
Cro. Car. 596.
8. Vin. Abr.
586.
22. & 23. Car. 2.
c. 15.

THE bill stated, that by the judgment of the late parliament of *England*, assembled at *Westminster*, on the third of *November 1640*, the rectory of *Saint Switbin's*, in *London*, stood sequestered from *Richard Owen* to the use of *A. Menlius*, an orthodox divine; and that, he relinquishing the same in the year 1647, it was, by the same parliament, in the same year, afterwards ordered, that the same rectory should from thenceforth stand sequestered to the use of him the plaintiff, and that he should officiate the same, and have to his use the parsonage-house, glebe lands, and all the tithes, rents, duties, and profits whatsoever of the said rectory to his own use till further order should be taken in the premises; that by virtue of the said order of parliament he entered, and officiated in the cure, and performed his duty therein in all things, and ought to have had the tithes, offerings, profits, and commodities, of what kind soever, belonging to the same as rector and parson there, as the former ones had heretofore had and received and enjoyed the same. The bill then set forth the statute and the decree, confirmed by act of parliament in the thirty-seventh year of *Henry the Eighth*, touching the payments of tithes by the citizens of *London* after the rates of every ten shillings a year rent one shilling and fourpence halfpenny, and for every twenty shillings the sum of two shillings and ninepence, and so on; and that the greatest part of his parishioners have and still do continue payment of all kind of tithes, offerings, duties, and profits to the plaintiff, or some recompence for the same; but the defendants have for five years refused the payment of the same. The plaintiff therefore prays, that the defendants may make a full discovery of the messuages, &c. they held for the same years, and the yearly rent, and that the tithes and duties due for the same may be decreed to him accordingly.

Plea and demurrer.

The defendants put in a plea and demurrer, setting forth, that the plaintiff intitles himself to the tithes in question by an order of the late parliament begun and held at *Westminster* in 1640, but makes his title by act of parliament made in the thirty-seventh year of HENRY THE EIGHTH, and of a decree made thereupon; and that it was doubtful whether the plaintiff, coming in by sequestration, be relievable before the mayor of the said city of *London*; and therefore the said defendants FOR PLEA SAITH, that the said act of parliament and decree do only provide for the recovery of tithes in *London*; and that in and by the said decree it is decreed, "that if any variance, controversy, or strife, "did or should arise in the said city for any payment of tithes, then, "upon the complaint by the party grieved to the mayor of the said "city, he shall, by advice of counsel, call the parties before him, "and

“ and make an end of the same ; and if he should not within two months after the complaint, THE LORD CHANCELLOR OF ENGLAND, within three months after complaint made to him, should make an end of it ;” that the said plaintiff ought to have pursued the way directed by the said decree ; and that if the plaintiff be not relievable within the said decree by the said lord mayor of *London* and lords commissioners of the great seal of *England*, as he said by his said bill he is, much less could this court take cognizance or jurisdiction of a case of this nature whereby to relieve the said plaintiff.

See the case of
Ex parte Crox-
all, 3. Atk. 639.

Upon reading the plea, and hearing counsel on both sides, on the twenty-fourth of *November* 1655,

IT WAS ORDERED BY THE COURT, that the said plea and demurrer should be over-ruled, and that the said defendants should answer the said bill.

The defendants answered, and denied that they knew that the plaintiff was ordered to officiate the cure of the said parish as rector there, and have the profits, or that he had officiated there ; and that if he had any title thereto, they did not conceive him to be entitled to two shillings and ninepence in the pound for his tithes according to the rents of their houses, it being not the intent of the said statute and decree to pay tithes according to the improved rents, but according to the old rents as they were before the said statute ; they confessed that they were inhabitants, and set forth the houses, &c. and the rents they paid for the same ; and that when the said plaintiff first came to officiate there, he agreed to accept of one hundred and twenty pounds *per annum* with some of the parishioners in lieu of tithes and duties there, which had been constantly paid to him.

The rate ordered by the statute 37 Hen. 8. c. 12. s. 2. to be paid on the rent of houses in *London* in lieu of tithes, is assessable on the improved rents of such houses (a)
3. Atk. 639.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides.

Now upon full hearing and full debate, and reading the proofs in the cause, and the said order of parliament begun and held at *Westminster* aforesaid, on the third of *November* 1640, bearing date the thirtieth of *December* 1647, IT APPEARETH TO THE COURT, that it was ordered that the said rectory of *Saint Switbin* should from thenceforth stand sequestered to the use of the said plaintiff, and he to officiate the same, and to have all the tithes, duties, and profits whatsoever of the said rectory to his own use ; AND ALSO IT APPEARETH, that the said plaintiff, by virtue of the said order of parliament, did ever since officiate the said cure, and perform his duty therein in all things, and therefore ought to have had the tithes, offerings, profits, and commodities, of what kind soever, belonging to the said rectory, as

(a) But see now the statute 22. & 23. Car. 2. c. 15. s. 2. by which this parish, and the others mentioned in the act, are to be assessed in gross sums.

SHEFFIELD
against
PIERCE
AND OTHERS.

rector and parson there, as the former ones there heretofore had had and received the same; and that the said defendants had not paid the tithes due to the plaintiff for the several years complained of in the bill to be behind and unpaid.

And as for *the composition*, pretended to be made between the said parishioners and the said plaintiff, to accept of one hundred and twenty pounds *per annum* in lieu and satisfaction of all tithes and duties due and payable to him within the said parish, IT APPEARETH TO THIS COURT, that the said composition was to continue for the space of three years next after the said plaintiff's coming to officiate there, and no longer; and there not being sufficient proof made on the said defendant's behalf that the said sum of one hundred and twenty pounds was paid to the said plaintiff any longer than the said three first years.

THE COURT is therefore fully satisfied, for the reasons before alledged, that the defendants ought to have satisfied and paid their several and respective tithes, due and payable by them, to the said plaintiff for the years aforesaid complained of by the bill, according to the rate of two shillings and ninepence in the pound for their several houses, shops, &c. which they held within the said parish, according to the several rents; and the said plaintiff being present in court, and willing to accept the several sums heretofore paid by the said defendants for their several houses, &c. for tithes, as mentioned in the said decree, in full satisfaction of all tithes due and payable to the plaintiff by the said defendants; and that the said defendants shall continue the payment of the same as long as he continues rector thereof, and they continue inhabitants within the said parish; and if any differences arise between the said parties touching the payment of the tithes according to the several rates and proportions in the decree mentioned, it is referred to the auditor of his highness's revenue within the city of *London* to cast up the same upon view and perusal of the said pleadings, and certify to this court his doings and proceedings therein with all convenient speed; and that upon return of the said certificate the said defendants shall thenceforth satisfy and pay to the said plaintiff all such sums of money as shall be certified by him to be due to the plaintiff. AND IT IS ORDERED, that the said defendants shall satisfy and pay to the said plaintiff ten pounds for his costs and charges by him sustained in the said cause.

NICHOLAS, *Baron.*
PARKER, *Baron.*
HILL, *Baron.*

Coe,

COE, Clerk, *against* MASON.MICR. TERM,
9. CAR. 2.*Hertfordshire, 26th November 1657.*

THE plaintiff, as vicar of the parish-church of *Branghinge*, exhibited a bill, setting forth, that he, on the first of *June* 1648, by an order of the committee for *plundered ministers* appointed by authority of parliament, was nominated and appointed to officiate the cure of *Branghinge* (being at that time under sequestration for the delinquency of *William Archer* incumbent), and to hold and enjoy the vicarage-house and the glebe lands, and also to take, receive, and enjoy, all and singular the tithes, benefits, and profits thereof, as had been before received by his predecessors; and that he had fully performed the cure, whereby he was entitled to have and receive all manner of small tithes; that from time whereof the memory of man is not to the contrary, or otherwise, by some *ancient endowment*, the vicar of the said parish-church, for the time being, hath received and taken, and is entitled to take, receive, and enjoy, all and singular the tithes of hay, hops, lamb, wool, and woods, and all and singular the minute and privy tithes yearly from time to time coming and growing, &c. within the said parish and titheable places thereof, and which had always been paid in kind; that the defendant, for divers years past, had been an inhabitant therein, and for two years was occupier or possessor of divers lands, meadow and pasture, parcel of and belonging to the manor of *Branghingbury* and the titheable places thereof, and planted hops, and cut down wood, and did keep and depasture upon the said grounds sheep, from which he had lambs, and sheared the same, and had wool, and also cut down grafs, and made the same into hay; the tithes of all which amounted to a large sum, and all which said tithes are due to the said plaintiff, and ought to have been paid *in kind*, or some composition made to him for the same; which the said defendant did detain from him, and refused the said tithes. He therefore prayed a discovery of his said tithes, and the values thereof, and an account and satisfaction for the same.

The defendant by his answer said, that it may be true, but that he knew not that the plaintiff was appointed to officiate the cure of the said parish; that he believed the plaintiff for eight years past might have officiated the cure there, and have a right to all tithes formerly of right paid to the vicar; but he denied that time out of mind, or by ancient endowment, the vicar ought to have all tithes of hay, hops, and wood, and all minute tithe. The answer also stated, that for three years past he had inhabited in the said parish, and been farmer of lands there, parcel of the said manor; and he set forth his titheable matters, and the values thereof, and that he had paid no tithe at all to the plaintiff, conceiving

An endowment that the vicar of *Branghinge*, in *Hertfordshire*, shall "wholly receive and fully possess all obventions of the altar, with the tithes, and the vicarage-house, and all the land to the said church, except *Waldber-*ry and the tenements in the possession of the canons of the *Holy Trinity*, in *London*," intitles him to all small tithes arising in the parish.

Cox
against
MASON.

conceiving there was none due to him, for that all the lands he occupied were and are *demesne lands* of the said manor, which were parcel of the possessions of the priory and canons of the *Holy Trinity*, in *London*; that the church of *Branghinge* was long since appropriate to the priory and canons, and confirmed to them by the bishop of *London*, being bishop of that diocese; and that by an endowment made in the year 1218 it appears, that the vicar of *Branghinge*, in the name of the vicarage, "should
" wholly receive and fully possess all obventions of the altar,
" with the tithes and the vicarage-house, and all the land to the
" said church then belonging (except the croft called *Valdebery*,
" and except the tenants and their tenements which in the por-
" tion or dividend of the canons should remain;" that, by virtue of the said endowment, the vicar there never could claim to have any small tithes of the tenants and occupiers of the said lands which the defendant holdeth within the said parish, the same being excepted from payment of any minute tithes to the vicar by the same endowment, the said lands, and also the minute tithes, being the portion or dividend of the said canons; that he never heard that any minute tithes, or any tithes at all, were ever paid or given to any of the vicars of *Branghinge* for any of the lands in his occupation; neither doth he conceive, that the said vicar hath any right or title to the same, either by prescription, endowment, or otherwise; that about thirty years since the owners or occupiers of *Branghingberry*, whereof the lands in the defendant's occupation are parcel, did, for some years, give to the vicars thereof for the time being *five marks* a year by way of gratuity, though the vicars pretended it an ancient payment in lieu of small tithes; and therefore insisted on his right to refuse to pay tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

Copy of an endowment read, explaining the right of the vicarage tithes.

The cause came on this day se'nnight; and upon opening the pleadings, and reading a copy of an endowment extracted out of the principal registry of the late bishop of *London*, dated at *Fulham*, in the year 1618, and proved to be a true copy, which seemed to explain the right of the vicarage tithes in question. The Court took time to consider of the same, whereupon the barons being attended with copies, the cause came on to be further heard this day; and upon full and deliberate hearing,

The Court's opinion.

And upon long debate of the matters in question, and touching the meaning of the said endowment; and upon reading the several depositions for the plaintiff touching the payment of the tithes in question to the vicar of *Branghinge* for the time being; *Forasmuch* as it appeareth to the Court, by the depositions of several witnesses, that the small tithes of hay, hops, wool, and other small tithes, have been paid in kind, or by composition, to the

the plaintiff, as vicar of *Branghinge*, and to his predecessors vicars there; and for that it is also proved by the plaintiff that the said defendant for the said years had the aforesaid tithes of hops, wood, hay, wool, and lambs, the tithes of all which amounted to seven pounds four shillings and eight pence; and the Court being of opinion, that by the said endowment the said plaintiff is entitled to all the small tithes arising within the said parish; IT IS THEREUPON FINALLY ORDERED, ADJUDGED, AND DECREED by this Court, that the said defendant shall forthwith pay unto the said plaintiff, or to his assigns, the said sum of seven pounds four shillings and eight pence for the value of the said tithes by him detained from the said plaintiff.

COR
against
MASON.

PARKER, *Baron*.
HILL, *Baron*.

THOROWGOOD, Knt. and Others, *against* ORDE.

MICH. TERM.
9. CAR. 2.

Durham, 30th November 1657.

THE bill stated, that the plaintiffs, by two several acts of parliament, and by an ordinance of his highness THE LORD PROTECTOR and his council, became seised of all the tithes of fish and fishing on the south side of the *Tweed*, by custom, time out of mind used, payable and belonging to the parish-church of *Norham*, being parcel of the possessions of the late dean and chapter of *Durham*; that they, being so seised, by their indenture, dated the eighteenth of April 1655, did demise the said tithes, with the appurtenances, to the plaintiff *Edward Salkeld*, to hold for six years, under such covenants as are in the said lease mentioned; that the defendant, pretending title to the said tithes, would not suffer the plaintiff to enjoy the same, by pretence of some lease or otherwise. He therefore prayed a discovery of his said title, and an account, and a satisfaction for the said tithes; and that the plaintiff's right to them might be established.

The tithe of all fish caught on the south side of the river *Tweed* established in the dean and chapter of *Durham*.

The defendant stated, that his grandfather and father were seised of the tithes in their *demesne as of fee*; and that his father dying so seised, they descended to him as son and heir, he paying yearly twelve pounds to the dean and chapter of *Durham*, and now to the preaching minister of *Norham*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

The cause came on to be heard the eleventh day of June last;

When upon reading several leases heretofore made of the premises to the defendant's father, and to the defendant himself by the said dean and chapter, this Court directed an issue, "whether all the tithes of the fish and fishing in the south side of the *Tweed*,
" by Issue directed.

THOROWGOOD AND OTHERS "by custom, time out of mind used, payable and belonging to the parish-church of *Norham*, being parcel of the possessions of the late dean and chapter of *Durham*, were payable to and belonging to the said late dean and chapter;" on the trial of which issue a verdict passed for the plaintiffs.

The cause now came on upon the equity reserved; and upon reading the order and the *posse*, and hearing of counsel,

Decree.

IT IS ORDERED AND DECREED BY THE COURT, that the plaintiff *Salkeld* shall quietly have, receive, and gather the said tithes of the fish and fishing on the south side of the *Twee*!, payable and belonging to the parish-church of *Norham*, for and during the residue of the term granted to him by the said other plaintiffs, without the let, disturbance, or interruption of the said defendant, his heirs, assigns, servants, or agents, or any claiming from, by, or under him; and that the said other plaintiffs, and the rest of the trustees in the act or ordinance named, their heirs and assigns, from and after the end and expiration of the said lease by them made to the plaintiff *Salkeld* of the premises, shall peaceably and quietly have, receive and take the said tithes of the said fish and fishing without the let, hindrance, or disturbance of the defendant, his heirs, agents, or servants, or any claiming for, by, or under him; AND IT IS FURTHER ORDERED, that the defendants shall satisfy and pay to the said plaintiffs the profits by him received out of the said tithe of fish or fishing from the sixth of *January* 1649 until the twenty-ninth of *September* 1652, the commencement of plaintiff *Salkeld*'s lease, and from thence they do pay to the plaintiff *Salkeld* the tithes due to him; and to the end that the said profits may be ascertained and made appear to this Court, IT IS FURTHER ORDERED, that a commission shall be awarded to commissioners within the said county of *Durham* to enquire of the value of the profits received by the said defendant or his agents during the time aforesaid.

19th Feb. 1658. In pursuance of the said decree, the auditor returned his certificate; and upon reading the order and certificate,

IT IS ORDERED BY THE COURT, that the said defendant shall pay the money certified due for the value of the tithes in question, unless cause shewn to the contrary.

5th May 1659. It is this day ordered by the Court, that the said order be made absolute.

PARKER, *Baron.*
HILL, *Baron.*

HELLE,

HELE and Others *against* PRONTE.MICR. T28M,
9. CAR. 2.*Devonshire, 16th November 1657.*

THE bill stated that the plaintiffs, ever since the twenty-fifth of *March*, in the year 1653, have been lawful owners of the rectory impropriate of *North Petherwin*, in *Devonshire*, with all tithes and profits thereunto belonging; that, time out of mind, all the tithes of corn and grain growing therein, and the titheable places thereof, have been always paid to the rectors and owners thereof in kind, or a composition for the same; and that the defendant hath been yearly owner of twenty acres of arable land within the said rectory, and did yearly mow wheat, barley, oats, and other grain, and carried the same away without setting out the tithe thereof regularly. The bill therefore prayed a discovery of the quantity and the value, and that the defendant might be decreed to pay the same.

A bill in equity lies to be relieved against the subtraction of predial tithes, notwithstanding the statute 2. & 3. Edw. 6. c. 13. gives an action at law.

The defendant appeared, and put in a *demurrer* and answer.

And for demurrer he set forth, that between the twenty-fifth of *March* 1653 and the twenty-fifth of *December* in the said bill mentioned, he was owner of twenty acres of arable land within the said rectory, sown with wheat, barley, oats, and other grain, and did yearly mow the same, and converted the same to his own use, and that the tithes thereof yearly were worth five pounds; but that he is advised that the subtraction of predial tithes by the not setting out of the tithe from the nine parts, and the unequal division thereof, are matters which may be relieved at law upon the statute 2. & 3. *Edw. 6. c. 13.*; and therefore the plaintiffs ought not to prosecute any suit in equity for the same; the said plaintiffs not having set forth any certain title to the tithes, or shewed how long since their estate therein might commence since the subtraction of the said tithes. The defendant also set forth the titheable matters, and denied any fraud in setting out their tithes.

Demurrer as to the plaintiff's title, &c.

2. Inst. 649.

The plaintiffs replied to the answer; the defendant rejoined; and witnesses were examined on both sides.

And upon opening the pleadings, and reading the evidence, and upon full debate,

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff seven shillings and sixpence proved to be due and detained for tithes complained of by the said bill, and shall at all times hereafter duly tithe and set forth the tithe of corn and grain arising, &c. in the said parish and titheable places thereof by itself, so that the said plaintiffs or their servants may for the future take and carry away the same without any trouble or denial from the said defendant, or any claiming by or under him.

By ALL THE BARONS.

AYLOFFE

HILARY TERM
9. CAR. 2.

AYLOFFE against PENNINGTON and Another.

Cumberland, 15th February 1657.

A *modus* of six pounds in lieu of small tithes arising in the parish of *Millom*, in *Cumberland*, established.

THE bill set forth, that the late *King Charles*, being seised, in right of his crown or of the *duchy of Lancaster*, of the rectory of *Millom*, parcel of the possessions of the late dissolved monastery of *Furnesse*; by indenture dated the third of *June*, in the nineteenth year of his reign, in consideration of thirty-one pounds, thirteen shillings, and fourpence rent, reserved, did demise the same, and all the tithes, as well predial as otherwise, to the said plaintiff for thirty-one years, who did enter and possess himself thereof; that the defendants were for several years past possessed of divers pasture grounds or herdwick therein, and had great flocks of sheep and lambs yearly, the tithe whereof belonged to the plaintiff. He therefore prayed a discovery, and relief in the premises.

The defendant *Allan Pennington* (administrator of *William Pennington*) answered, and set forth an estate in lands or right of common within the said rectory; but what estate, lands, sheep, lambs, and wool, the said *William Pennington* had he knew not; but confessed that the said *William Pennington* is dead, and that he had left sufficient assets, but knew not whether any tithes were due.

The defendant *John Pennington* set forth, that he believed the said plaintiff was seised of the rectory, and that he the said defendant is seised of divers lands therein, to which he had common belonging in divers great wastes; and that he had sheep on them; and he prescribes to pay a *modus decimandi* of six pounds in discharge of small tithes, payable by reason of his depasturing in the said wastes; and that he was always ready and willing to pay the same to the plaintiff, if he would accept it.

The plaintiff replied; and the cause being at issue, witnesses were examined. Upon the hearing whereof it appeared to the Court, by the answer of *John Pennington*, that he prescribed to pay a *modus* of six pounds as aforesaid; and therefore it was thought fit to refer the same to a trial at law upon the said *modus*.

A trial was had, and a verdict passed for the defendant.

21st Oct. 1658.

IT WAS THEREUPON ORDERED by the Court, that the said bill shall be dismissed, unless cause shewn to the contrary, the said plaintiff first paying five pounds costs for this day's attendance before he be heard; and no cause being shewn, IT IS ORDERED BY THE COURT, that the said order be made absolute.

11th Nov. 1658.

MILLS *against* EDBROOKE.MICH. TERM,
9. CAR. 2.*Somersetshire and Devonshire, 16th November 1657.*

THE bill stated, that the late KING CHARLES was seised of the forest of *Exmore*, lying in the counties of *Somerset* and *Devon*, with the precincts, members, and appurtenances thereof, in his *demefne as of fee*, in the right of THE CROWN OF ENGLAND; which said forest lieth out of all parishes and out of all titheable places belonging to any church or chapel whatsoever; that by reason the said forest lieth not within any parish or titheable place, the said late *King Charles* and all his progenitors, by the laws of this nation and by their prerogative royal, in and by all the time whereof the memory of man is not to the contrary, have, and used to have and enjoy all manner of tithes whatsoever happening, &c. within all and évery the part of the said forest, and within the metes and boundaries thereof; that the said king, being so seised, by letters patents dated the first of *July*, in the ninth year of his reign, in consideration of two hundred marks paid by *George Cottington*, did give and grant to him, his heirs and assigns, in fee-farm, all those his tithes happening, &c. within the said forest, in places without any parish, to hold them for ever, yearly yielding a fee-farm rent of thirteen pounds, five shillings, and eightpence, by force whereof he was lawfully entitled to the tithes of all the said forest, and was seised thereof in fee simple, and had and enjoyed the same accordingly; and being so seised, and his right and title to the said tithes being confirmed by the decree of this court against divers persons that opposed the same, he, by indenture made between him and *John Mills*, (the plaintiff's late father), dated the first of *May*, in the eleventh year of the late king, did grant the same to him and his heirs for ever, which said indenture is inrolled in chancery; by virtue whereof the said *John Mills*, in his life-time, was seised, and received the tithes, and soon after died, and the same descended to the plaintiff as his heir, who became seised therein; and he averred and maintained, that the tithes of the said forest of *Exmore* of right did belong to the late KING CHARLES, and now doth belong to him, and not to any church or chapel, or parson, vicar, or proprietor whatsoever, or their farmers; yet nevertheless the defendants, being inhabitants near the said forest, having for divers years past agisted and depastured several hundred of bullocks, horses, &c. within the forest, absolutely refused to pay to him his agistment tithe for the same, though the said *George Cottington* recovered tithes by the decree of this court. He therefore prayed a full discovery and relief in the premises.

Tithes shall be paid to the king for the cattle agisted and depastured on the extra parochial lands lying within the forest of *Exmore*.

The

MILLS
against
EDBROOK.

The defendants answered, and set forth a prescription to be exempted from payment of tithes ; and the number of cattle they depastured on the forest ; but denied that any tithes in kind were ever paid for wool and lamb.

Special replica-
tion,

The plaintiff replied ; and said, that he had good title in law to the said tithes, and that the said letters patent were good and valid ; and traversed, that the inhabitants of the hundred adjacent, which had agisted their sheep and cattle in the said forest, had, time out of mind, or at any time, at a certain rate payable to the king or his farmer, in consideration thereof, or for other consideration, been discharged from the payment of tithes, or had paid any thing in lieu thereof ; and that what was paid in satisfaction of agistment could not also be paid in satisfaction for tithes, which are of common right payable, for discharge whereof no person, not ecclesiastical, can prescribe to a non-payment, as the said defendants pretend.

and special re-
joinder ; and a
void prescrip-
tion stated.

To which replication the defendants rejoined, and said, the plaintiff had made no good title to the tithes, nor did any thing pass by the letters patents ; that their ancestors and predecessors, which had agisted cattle in the said forest, had been discharged from payment of tithes, or any thing in lieu thereof ; and that the payments of the rates set forth by their answers was and might be a good and reasonable custom, and discharge for tithes within the said forest.

Issue being joined, and witnesses examined on both sides, the cause came on to be heard the sixth day of *June* last, when it was objected by the defendants' counsel, that the plaintiff had not, by his said bill, set forth a title to himself.

Bill amended.

The bill was accordingly ordered to be amended ; and thereupon the Court further proceeded to an hearing ; and upon debate of the prescription set forth by the answers, by counsel on both sides, the Court declared, that the prescription, as the same was set forth, was a void prescription in law to discharge the defendants from the payment of tithes for their sheep and cattle depasturing within the said forest of *Exmore*.

Bills and an-
swers ordered
to be amended,
by consent.

And for that this Court could not then further proceed in the cause, by reason of the defects in the bills and answers upon the prescription set forth by them, the defendants counsel prayed they might amend ; and to the end the cause might receive a speedy determination, IT WAS ORDERED, on the eighth of *June*, that the plaintiff should amend his bill throughout in relation to the plaintiff's title and the conveyance set forth to be made by the plaintiff's father ; and by consent on both sides, the answers were to be amended as to the prescription therein set forth without oath ; and the custom of the said prescription was referred to a *trial at law* to be had at the bar of this court by a jury of the county of *Dorset*, and one action to determine the whole ;

A trial at bar
ordered.

whole ; and that a commission should issue to examine witnesses on both sides.

MILLS
against
EDMUND.

The bill and answer were amended.

The answer was amended in the following manner, that is to Prescription say, " That the forest of *Exmore* is an ancient forest; wherein properly stated, " sheep and other cattle have used to be depastured ; that within " the said forest there is an ancient custom and usage, by all the " time whereof the memory of man is not to the contrary used, " that no tithes hath or ought to be paid for sheep and cattle " agisted and depastured in the said forest for such time as the said " sheep or cattle have been there agisted and depastured ; and that " they and all other the inhabitants, within the counties of *Devon* " and *Somerset*, which dwell and inhabit within the hundreds ad- " jacent and near to the said forest of *Exmore*, and their respect- " ive ancestors, and predecessors, who have from time to time " agisted and depastured their sheep and other cattle in and upon " the said forest of *Exmore*, by all the time whereof the memory " of man is not to the contrary, have used to pay a certain rate " or price in money, payable and to be paid to the king's majesty " for the time being, his farmer, tenant, or lessee of the said forest " for the time being, at or upon the feast-day of *Saint James the* " *Apostle*, in every year, at a certain place known and used, viz. at " the village of *Withypoole*, viz. two shillings for every score of to pay two shil- " sheep, and after that rate for any greater or lesser number ; lings for every " twopence the summer and twopence the winter for a horse, score of sheep, &c. " mare, or gelding ; and twopence for a bullock ; and after these " rates for a greater or lesser number ; and that, in consideration " of the premises, they and every of them have respectively, from " time to time, during all the time aforesaid, whereof the memory " of man is not to the contrary, been discharged, exonerated, and " acquitted of the payment of any other sum or sums of money " for the agistment of their respective sheep and cattle ; and also " of and from the payment of any sum or sums of money for tithe, " or other thing in lieu of, or satisfaction for tithes, of any other " sheep, cattle, or beast, agisted or depastured in and upon the " said forest of *Exmore*, and of wool of the same sheep."

The plaintiff thereupon declared upon the custom, &c. ; and the action at law coming on to be tried, the jury, without going from the bar, gave a verdict for the plaintiff.

The cause now came on for further directions on the equity reserved ; and, upon reading the said orders and the verdict, and hearing counsel on both sides, the plaintiff's counsel desired the Court would be pleased to decree the said tithes for the plaintiff, and refer it to the auditor to cast up the values accordingly.

The defendant's counsel thereupon objected, that the plaintiff The king may have tithe of lands in his own possession. had not by his bill made any good title to himself of the tithes demanded by his bill, whereupon this Court could ground

MILLS
against
EDBROOKE.

ground a decree, for that no tithes passed to the said *George Cottington* by the letters patent; for that it is set forth in the bill, that the king was seised of the forest of *Exmore*, and he could not have tithes out of his own lands: and further, that the demand of tithes for agistment of cattle agisted or depastured in the said forest was not good, for that tithes are to be paid of things in possession; and the king, being in possession of the forest, could not have tithes of the cattle agisted in the said forest.

To which objections, and what else was offered by the defendant's counsel, the plaintiff's counsel did give their answers, wherewith the Court was fully satisfied; and after a long and serious debate,

The opinion of
the Court.

THE COURT declared, that the letters patent were good and sufficient in law; and that the tithes were grantable by the late king, and had well passed to the said *George Cottington*, and from him well come to the plaintiff; that he had well entitled himself to sue for the said tithes in this court; and that there is sufficient matter in the said bill for this Court to ground a decree upon.

IT IS THEREUPON ORDERED BY THE COURT, that the plaintiff shall have the tithes of all such sheep and cattle as have been agisted and depastured by the defendants within the forest of *Exmore* during the fourteen years mentioned in the said bill, for the time of their agistment in the said forest; and that it be referred to the auditors of the said counties to cast up the values and return their certificate.

NICHOLAS, *Baron*.

PARKER, *Baron*.

HILL, *Baron*.

3d May 1658. The auditors, having been attended therein, made and delivered in their certificate; which, together with the decree, being read, the plaintiff's counsel prayed, that the auditor's certificate might be decreed and confirmed, unless cause shewn to the contrary.

3d July 1658. IT IS THEREUPON ORDERED BY THE COURT accordingly; and no counsel appearing for the defendants, the above order was made absolute

BY THE COURT.

EASTER TERM
10. CAR. 2.

MARKINFIELD *against* BURTON.

Yorkshire, 10th May 1658.

The great and small tithes of *Aberwaite*, *Ingarthorpe*, and *Markinton*, in *Yorkshire*, claimed by grant from *James the First*.

eleventh

eleventh year of his reign, granted the said tithes to *Morrice and Phillips* in fee farm, under the yearly rent of eight pounds ; that they, on the twenty-ninth of the said *May*, granted the same to *George Dawson* in fee, who became seised, and took the profits ; that *George Dawson*, on the ninth of *May*, in the twelfth year of the king, let the same to *Thomas Harrison* and his heirs, who, on the tenth of *September*, in the fourth year of *Charles the First*, for four hundred and thirty-five pounds, demised the premises to the plaintiff, who received the tithes for several years together ; that the parishioners had paid them without denial for twenty-seven years past ; that the tithes have always been paid in kind, or other rates and payments made in lieu thereof ; that the defendant, for fourteen years past, had occupied land in *Ingarthorpe*, and had plowed, sowed, reaped, and mowed, and carried away the produce thereof in corn and hay ; that he had kept cows, sheep, and sows, which bred several calves, lambs, and pigs, and had other *small tithes* ; but that he had got the conveyance of the premises to the plaintiff in his own possession, and had therefore refused to pay the said tithes. The bill therefore prayed a discovery, and a satisfaction for the tithes.

MARRINGTON
against
BURTON.

The tithe of
corn and hay,
and small tithes
demanded.

The defendant answered, and said, that he knew not that *KING JAMES* was seised of or had granted the said tithes and payment for tithes, or that the same had descended to the plaintiff, as mentioned in the bill ; but he confessed, that for fourteen years past he had held divers arable, meadow, and pasture lands in *Ingarthorpe* and in *Rippon*, some of which he had sowed with corn, and laid some down into meadow, of which he had cut down the grass, and made the same into hay, and carried it away ; that he had also kept thereon sheep, cows, and bullocks, and had wool and lambs therefrom ; that in every of the said years he and his ancestors had enjoyed several lands in *Ingarthorpe*, but could give no account of the premises and tithes, nor of any composition made or paid for the same, nor did he keep any account - hereof ; that during the said years he duly paid and set out his tithes to the plaintiff of corn, grain, hay, wool, and lambs ; but that he had refused to pay the tithe of cows, calves, butter, geese, hemp, flax, and such like *small tithes*, or to compound for the same, because *KING JAMES* by letters patent, dated the eighth of *June*, in the fifth year of his reign (two years before the said grant to *Morrice and Phillips*), granted to the dean and chapter of *Rippon*, and their successors, the said *small tithes*, under the names of " committees," or " common devident money ;" that their successors had ever since enjoyed the same, and that their estate was vested in trustees for the maintenance of ministers, as to the said *small tithes*, who have demised the same to *Professor Rowby* for a term then in being ; and that the said *Rowby* was entitled to receive the said *small tithes* ; and he denied that the said small tithes belonged to the plaintiff, or that

The defendant
confesses, that
he is occupier
of lands in *In-*
garthorpe,

from which he
has cut both
corn and hay,
and on which
he has fed cows
and sheep,

and has paid his
great tithes ;

but pleads, that
the *small tithes*
were granted to
the dean and
chapter of *Rip-*
pon ;

who had demis-
ed the same for
years to *Professor*
Rowby.

MARKINFIELD the plaintiff ever received the same, or was in possession thereof, *against* save only for two or three years, and that then he received them by virtue of a power from the said dean and chapter of *Rippon*. **BURTON.** He also denied that he was in arrear for tithes of corn, grain, wool, and lambs, or for any composition for the same; and said, that he had not any lands in *Aberwaite* or in *Markinton*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

The defendant admits the plaintiff's title to the great tithes.

and proves a customary payment in lieu of tithe hay.

And now upon full deliberate hearing, and the defendant's counsel admitting the plaintiff's title to the tithes of corn, wool, and lamb, but denying his title to the *small tithe*; and upon reading the letters patent of the grant of the said tithes to *Morrice* and *Phillips* made by KING JAMES, dated the eighth of *May*, in the eleventh year of his reign; by which it appeared, that only the tithes of *corn, hay, wool, and lamb*, were granted to them; and upon reading several depositions on the defendant's part, and also an exemplification of a verdict and judgment obtained by the defendant against the plaintiff in the court of common pleas; by both of which it appeared, that a customary payment of one shilling and sixpence at *Michaelmas* yearly, or afterwards, upon request, hath been paid by the tenants and farmers of the demesne lands of the said manor of *Ingarthorpe* in full satisfaction of tithe hay growing and renewing in and upon the said demesne lands, to the proprietor or farmer of the tithes: and also because it appeared, by the proofs taken on the defendant's part, that the defendant hath, for the time mentioned in the bill, duly set out and paid his tithes of corn, wool, and lamb; and that the plaintiff had not made out any title to the *small tithes*.

The plaintiff's bill dismissed as to corn, wool, &c. and an issue directed to try the custom.

THE COURT ordered, that as touching the tithe of *corn, wool, and lamb*; and also as touching the *small tithes*, the plaintiff is dismissed this Court without prejudice, unless cause be shewn to the contrary; and as touching the tithe *hay*, that a *trial at law* be had on the customary payment of one shilling and sixpence in lieu of the said tithe hay.

PARKER, *Baron.*
HILL, *Baron.*

24th Nov. 1658. The defendant's counsel now moved, that the said bill might be dismissed, for that the plaintiff had not tried the said issue; and upon reading the order, IT IS ORDERED BY THE COURT as prayed, unless cause be shewn, first paying five pounds costs before he be heard.

KEMPSTER

KEMPSTER, Clerk, *against* STUART (a).TRIN. TERM,
10. CAR. 2.*Devonshire, 21st June 1658.*

THE plaintiff, as vicar of the parish-church of *Brixham*, in *Devonshire*, exhibited his bill, stating that within the said parish, and the titheable places thereof, there is a custom, that every owner of any boats or seans used or employed in the trade of taking fish at sea, and all fishermen belonging to the same, and all persons living within the parish of *Brixham* and the titheable places of the same, and all others who have or shall set forth or put to sea from any port, key, harbour, cove, or place within the said parish, and use the trade of fishing and taking fish at sea, and who have taken or shall take fish at sea with boats, seans, nets, hooks, or otherwise, and all other persons whatsoever inhabiting and living elsewhere out of the said parish, and using the trade of fishing and taking of fish at sea, and who have brought on shore and landed the same after the taking thereof at any quay, harbour, cove, place, or port of the said parish or titheable places thereof, have respectively used and been accustomed to pay to the vicar, owner, or occupier of the vicarage of the parish of *Brixham*, or their farmers, &c. every twelfth fish of all sorts and kinds whatsoever taken at sea, or some satisfaction for the same; that the plaintiff was vicar there for four years past; and that the defendants being owners of boats, &c. there, and fishermen, had refused to pay the plaintiff his tithe fish.

The defendants denied the custom; and an issue was directed to try it; and on the trial, a verdict was given for the plaintiff; on which

IT IS ORDERED, ADJUDGED, AND DECREED by the Court, that the defendants shall forthwith pay to the plaintiff the several respective sums of money due for the *twelfth fish* of the fish by them taken for the four years charged by the said bill, according to the said custom (b).

MATTHEW HALE, *Chief Baron.*ED. ATKINS, *Baron.*CH. TURNOR, *Baron.*

(a) On the first of *December* 1660, 12. Car. 2. the same question came before the Court between the same parties, and the existence of the custom, as stated in the present case, was then referred to the consideration of a jury, when a verdict was again found for the plaintiff; and it was decreed, by ALL THE BARONS, that the defendants

should pay the respective sums of money due for the twelfth fish of the fish by them taken for the *four years* charged in the bill, according to the said custom.

(b) See the case of *Shepherd v. Penrose*, 1. Sid. 278. 1. Lev. 169. 2. Keb. 273. ; *Holland v. Heal*, 1. Roll. Abr. 636. ; and *Audley v. Fitty and Others*, ante, 5 to 9.

TRIN. TERM,
10. CAR. 2.

PAGE, Clerk, *against* ELTON and Others.

Herefordshire, 24th June 1658.

The vicar of *Ledbury* claims part of his tithes by the endowment, and by a composition with the portionaries; and on the agreement being proved in a trial at law, the tithes claimed are decreed.

THE plaintiff, as vicar of the parish of *Ledbury*, in *Herefordshire*, filed his bill, and set forth, that the tithes of corn and hay in the said parish, except the tithe of the corn and hay of the *Homesteads*, in the *foraigne* of *Ledbury*, were, at the first endowment of the vicarage, given to the portioner there; and that the tithes of corn and hay arising from the *Homesteads* were given to the Vicar of *Ledbury*, as also the tithes of wood, wool, lamb, calf, and other *small tithes*; and that time out of mind a composition was made between the vicars and the portionaries there, that each of the portionaries, in lieu of the tithe of the hay and corn in the *Homesteads* due to the vicar, should pay sixteen bushels of wheat and sixteen bushels of oats; and that the portionaries, among them, should take the tithes of corn and hay within the *Homesteads*; which corn tithes were accordingly paid until the year 1644; at which time the defendants *Elton* and *Skipp* being joint farmers of the portionary called the *Upperhall*, under *R. Gouland*, clerk, portionary there, did not only refuse to pay the moiety of the wheat and oats there, being worth ten pounds annually, but they, with the defendant *Wint*, had, for all the time aforesaid, detained their small tithes; for which the defendant *Elton*, for his part, was, by agreement made, in the year 1647, between him and the plaintiff, to pay three pounds *per annum*, part whereof, as also the tithes of certain water-mills, had been hitherto detained from him; and therefore he prayed to be relieved in the premises.

The defendant *Skipp* confessed, that he had sent to the vicar some quantities of corn, sometimes more sometimes less. The defendant *Elton* confessed the delivering of some bushels of corn to the vicar of *Ledbury*; and both of them denied tithes to be due to the vicar out of the demesnes of the said manor.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides,

And a trial at law was directed to be had, whether sixteen bushels of wheat and sixteen bushels of oats are due to the vicar of *Ledbury* yearly out of the portion of tithes called the *Upperhall*; as also whether the *small tithes* arising within the demesne lands of the manor of *Ledbury* are due to the vicar of *Ledbury*.

24th Nov. 1658. A trial being had, and a verdict given for the plaintiff on both issues.

IT IS ORDERED BY THE COURT, that the defendants *Elton* and *Skipp* shall pay to the plaintiff all such arrears as shall be found to be due to him for the portion of wheat and oats issuing out of the said portionary called the *Upperhall*; that all the defendants shall

shall pay the arrears respectively of all tithes of wool, lamb, wood, and other small tithes out of the demesne lands of the said manor, as they shall appear to be due; and that the case be referred to the auditor of the said county to cast up the same.

PAGE
against
ELTON
AND OTHERS.

WIDDRINGTON, *Chief Baron.*

NICHOLAS, *Baron.*

PARKER, *Baron.*

HILL, *Baron.*

DUGARDE, Clerk, *against* WEETE.

TRIN. TERM,
10. CAR. 2.

Warwickshire, 28th June 1658.

THE plaintiff stated in his bill, that for ten years past he was A composition
incumbent of the parish-church of *Barford*, in *Warwick-* of 13s. 4d. in
shire, and entitled to all tithes arising therein; that the rectors lieu of the tithe
there have anciently had tithe of the toll of the corn and grain of of toll of grain
three *water corn mills* lying and being within the said parish; for ground at a wa-
which, by ancient composition, there hath constantly been paid ter corn mill de-
to the said rectors there, by the occupiers of the said mills, the creed.
yearly sum of thirteen shillings and fourpence, the which they
call the *tithe-bopper*, or *bopper-money*, which ought to be paid by the
defendant to the said plaintiff, the said defendant having been,
for seven years last past, miller and occupier of the said mills;
but that he had refused to pay.

The defendant denied the custom; and on a *trial at law* a
verdict was given for the plaintiff; on which

IT IS ORDERED BY THE COURT, that the said defendant do 22d Nov. 1658.
pay to the plaintiff four pounds thirteen shillings and fourpence
for the tithes in question, at the rate of thirteen shillings and
fourpence a-year.

WIDDRINGTON, *Chief Baron.*

NICHOLAS, *Baron.*

PARKER, *Baron.*

HILL, *Baron.*

BLACKBORNE and Others *against* MILES.

HILARY TERM
10. CAR. 2.

Yorkshire, 10th Feb. 1658.

THE plaintiffs were owners and proprietors of the rectory of The plaintiffs
Marrick, in *Yorkshire*, and of the rights, tithes, and appur- demand tithes
tenances thereunto belonging. The defendant was farmer of for the rectory
certain of the *demesne lands* lying therein. The bill was brought of *Marrick*,
to be relieved against the non-payment of tithes. The plaintiffs on a *modus* of
stated, that by a certain custom within the said rectory used, 11. 4s. 6d. for
time out of mind, there hath been and yet is a certain rate or tithe hay on the
composition paid for the tithe of hay yearly arising therein; demesne lands,
after

BLACKBORNE after which rate and composition there is due to the plaintiff from the defendant for his meadow ground mowed and inned in 1655 the sum of one pound, four shillings, and sixpence ; and likewise by a certain custom within the said rectory, used by all the time aforesaid, there hath been another certain rate and composition paid for the tithe of the hay of certain inclosures or parcels of ground lying within the said rectory, commonly called or known by the names of *the Park, the Croftow, the Lyng, and the Lamb Closes*, being in the occupation of the defendant for the said year, after which rate there is due one pound, six shillings, and fourpence ; and also the like rates due to the plaintiffs for 1656 ; and that, notwithstanding the said rates paid for the tithes of hay, the plaintiffs have had and received, and ought to receive, their part and proportions of all manner of tithes of corn, grain, wool, lamb, and calf, and all other tithes in kind, yearly renewing, &c. and have had the same of former owners and occupiers of the said lands and grounds called *the Park, the Croftow, the Lyng, and the Lamb Closes*, in the defendant's answer mentioned, and that they were never detained except by the defendant.

against MILLS.
and xl. 6s. 4d. for tithe hay in certain inclosures,
and also the usual tithe of corn, wool, lambs, calves, &c.

The defendant avers, that there is a *modus* of xl. 6s. 4d. in lieu of all manner of tithes. The defendant denied that any tithes of wool, lamb, or calf were due in kind from him for 1656 ; averring likewise that there hath been, and ought to be paid yearly to the owners, proprietors, or farmers of the said rectory, the sum of one pound, six shillings, and fourpence in money for and in lieu and discharge of all manner of tithes arising within certain grounds parcel of the demesne lands of the said lordship of *Marrick*, called *the Park, the Croftow, the Lyng, the East Ridings, and the Lamb Closes* ; and that no tithes coming, arising, or renewing within any of the said grounds have been or ought to be payable in kind,

An issue directed, and the *modus* established. The Court referred the cause to a *trial at law* ; the issue to be, whether, time out of mind, there hath been paid to the owners, proprietors, and farmers of the rectory of *Marrick* the sum of one pound, six shillings, and fourpence in money, for and in lieu and discharge of all manner of tithes renewing and arising within certain grounds, part of the demesne lands of the lordship of *Marrick*, called *the Park, the Croftow, the Lyng, the East Ridings, and the Lamb Closes*, or not ?

8th Nov. 1660. A trial was had, and a verdict passed for the plaintiffs ; and upon reading the said order and the *postea*,

Payment decreed. IT IS ORDERED BY THE COURT, that the sums of one pound, four shillings, and sixpence, and one pound, six shillings, and fourpence for the said two years shall be paid to the plaintiffs ; and it is referred to the auditor to cast up the values of the rest of the tithes according to the proofs, and to certify the same ; which was done, and the decree accordingly confirmed.

HART, Clerk, *against* GRANTHAM and Others.EASTER TERM
11. CAR. 2.*Oxfordshire, 5th May 1659.*

THE bill set forth, that the plaintiff, in the year 1656, became the lawful incumbent of the rectory of *Mixbury*, in *Oxfordshire*, and hath ever since been seised thereof; and duly officiated the cure there, and ought to have had set out to him, by all the tenants of land within the said parish and the titheable places, all their tithes of corn, grain, and hay; that the defendants have held lands in a certain manor or village called *Willaston*, within the said parish, out of which several sorts of tithes did arise, which the defendants refused to pay or to set out.

The plaintiff claims tithes of the village of *Willaston*, within the parish of *Mixbury*.

The defendants admitted the plaintiff to be rector of the said parish, and that *Willaston* is in the said parish; but as to the tithes issuing thereout, and demanded by the bill, they denied that any of them ever paid any tithes in kind to the plaintiff or any of his predecessors, or that any were ever demanded before; and said that, for time whereof the memory of man is not to the contrary, there hath been used and accustomed to be paid, and was paid to the rector of *Mixbury* for the time being, or to his farmers of the said rectory, the sum of four pounds yearly at the feasts of the *Annunciation* and *Saint Michael*, by equal portions, in lieu and discharge of all tithes issuing or arising out of the lands in the said manor or village.

The defendants plead a *modus* of 4l. payable half yearly in lieu of all tithes arising from the lands in the village.

The Court directed an issue to try the *modus*, as stated in the answer; and a verdict was given for the defendant, which was now shewed forth in court; and upon the motion of his counsel,

The *modus* established in a trial at law.

IT IS ORDERED BY THE COURT, that the defendant shall be dismissed this Court of and from the said bill, and the matters therein contained, with costs.

10th Nov. 1659.

WIDDRINGTON, *Chief Baron.*
NICHOLAS, *Baron.*
PARKER, *Baron.*
HILL, *Baron.*

HODGKIN, Clerk, *against* JAMES.TRIN. TERM,
11. CAR. 2.*Sussex, 13th June 1659.*

THE plaintiff was rector of the parish-church of *Cotfield*, in the county of *Sussex*. The defendant was the executor of the last will and testament of *John James*, late rector of the said church, deceased. The bill was filed to procure satisfaction for dilapidations committed during the incumbency of the said *John James*.

A bill against the executor of the last incumbent of the church of *Cotfield*, in *Sussex*, for dilapidations.

The

The defendant ordered to pay 30l. for dilapidations, unless cause be shewn to the contrary. The defendant was served with a *subpoena* to hear judgment, but neglected to attend; and the Court, after reading the answer, and the depositions of several witnesses, ordered the defendant to pay *thirty pounds* for the said dilapidations, unless he shewed cause to the contrary.

The cause re-heard on the defendant's paying 5l. costs. On the twentieth of *June* 1659, the defendant appeared by his counsel; but he was ordered to pay the usual *five pounds* costs, for not attending the first hearing, before he should be heard.

On the twenty-fourth of *June* 1659, the cause was reheard.

Ordered to pay twenty nobles for dilapidations, and twenty nobles for costs. THE COURT ordered the defendant forthwith to pay *twenty nobles* for the said dilapidations, and *twenty nobles* for costs: in all the sum of *twenty marks*.

(a) But see the statute 13. Eliz. c. 10. f. 2. by which the cognizance of dilapidations is given to the ecclesiastical court; and the case of Salisbury v.

Whitby, 29th June 1682, 34. Car. 2. where the above statute was pleaded to the jurisdiction of the court of exchequer, and allowed.

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
FROM
THE RESTORATION.

RASHLEY *against* DAVIS.

TRIN. TERM,
12. CAR. 2.

Cornwall, 5th July 1660.

THE plaintiff, as owner and proprietor of the tithes arising for *renewing* within the parish of *Trewardreth*, in *Cornwall*, exhibited his bill touching the tithes of *pilchards* and *brook-fish* taken by the defendant, and landed within the said parish. Tithes are due for *pilchards* and *brook-fish* at the place where they are landed.

A trial at law was directed upon two several issues.

FIRST, Whether the tithes of *pilchards* landed at *the Parre* within the said parish of *Trewardreth*, ought to be paid in kind to the plaintiff?

SECONDLY, Whether the tithes of *brook-fish* landed at *the Parre* ought to be paid in kind to the plaintiff?

The equity to be reserved until after the trial.

A trial was had, and a verdict given against the defendant. Whereupon, in *Easter Term* last, the defendant moved for a new trial, alledging that the verdict was obtained by default, and therefore not sufficient to satisfy the Court to make any decree; and, by consent of both parties, a new trial was had upon

18th Nov. 1661.

RASHLEY
against
DAVIS.

upon the former issues, and the plaintiff obtained a verdict upon full evidence on both sides.

The plaintiff's counsel therefore prayed a decree for the payment of the tithes in question.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff the arrears of tithes of *pilchards* landed by him or his servants or agents at the place called *the Parre* or elsewhere, within the said parish of *Trewardreth*, and likewise the arrears of the tithes of *book-fish* landed there or elsewhere, within the same parish.

HALE, Chief Baron.

SANDS, Baron.

ATKINS, Baron.

TRIN. TERM,
12. CAR. 2.

HOLBECH against TAYLOR.

Warwickshire, 18th July 1660.

The owner of THE bill set forth, that *William Pawlett, Esq.* in the month of the tithes of *May* 1658, was seised, in his *demesne as of fee*, of and in the the parish of rectory, impropriation, and parsonage impropriate of *Filongbley*, *Filongbley*, in in *Warwickshire*, and of all manner of tithes of corn, grain, hay, *Warwickshire*, is and coppice woods, and of all manner of herbage and herbages intitled to 2s. whatsoever to the said rectory or impropriation belonging or for every 20s. appertaining, that is to say, two shillings for every pound rent rent, in lieu of in land by the year for the herbage thereof, then held with tithe for the other lands of the late KING CHARLES, his heirs and successors, herbage of lands by knight service *in capite*, under the yearly fee-farm rent of six under 6l. 3s. 10d. pounds, three shillings, and ten pence; that the said *William Pawlett* did demise the said rectory, and tithes, and herbages, a-year, held by *Pawlett* did demise the said rectory, and tithes, and herbages, knight service in from year to year, until 1650; that the farmers or tenants *capite* within the thereof did quietly hold and enjoy, as well the tithes of corn and parish. hay, as also the said yearly sum of two shillings, payable as afore- said for herbage belonging to the said rectory; that the said *William Pawlett* did afterwards, by indenture dated the eighth of *May* 1650, demise and grant the same to the plaintiffs, to hold for three years, at the rent of ninety pounds a year; that being so possessed, the said plaintiffs did, for the most part, quietly hold, receive, and enjoy, all and singular the said tithes, herbage, and sums of money due and payable for the same; that the said defendant enjoyed and occupied in possession pasture ground at eleven pounds *per annum* during the said term of three years, for which the said defendant ought to have paid to the said plaintiffs the yearly sum of twenty-two shillings, after the rate of two shillings for every pound rent of the land due and payable as aforesaid for herbage; but that he refused to pay the same as the former occupiers of the said ground had done. The bill therefore prayed, that the plaintiffs might be relieved concerning the said payment of two shillings in the pound for herbage.

The

The defendant appeared and answered ; the plaintiffs replied ; and witnesses were examined on both sides.

HOLBECH
against
TAYLOR.

And, upon long debate had thereof, for that it appeared to the court, as well by the depositions of witnesses, as also by several very ancient accounts of the tenth and eleventh years of *King Edward the Fourth*, that the said rate or payment of two shillings in the pound for herbage of such pasture ground which the said defendant occupied and enjoyed during the said three years, was due, and ought to be paid to the said plaintiffs,

Ancient ac-
counts in the
reign of *Edward
the Fourth* read
in evidence.

IT IS ORDERED BY THE COURT, that the defendant shall satisfy and pay to the plaintiffs the several sums of sixteen shillings, twenty shillings, and twenty-two shillings, according to the rate of two shillings for every pound rent so due to the plaintiffs for herbage of the pasture ground which the defendant held and enjoyed during the said term, and according to the proofs in the cause.

BRIDGMAN, *Chief Baron.*
TURNER, *Baron.*

TRINITY COLLEGE, CAMBRIDGE, and Others, *against* WYN.
MICH. TERM,
12. CAR. 2.

Yorkshire, 1st December 1660.

THE bill set forth, that KING HENRY THE EIGHTH being seised, in right of his crown, of the rectory of *Sedbergh*, in the county of *York*, with the rights, members, glebe lands, tithes, &c. coming, &c. within the said rectory, or within the liberty, territories, or precincts thereof, parcel of the possessions of the late priory of *Coverham*, did, by letters patent dated the twenty-fourth of *December*, in the thirty-eighth year of his reign, grant the said rectory and tithes, &c. to *Trinity College*, in *Cambridge* ; that the master, &c. being so seised, did, by indenture dated the first of *May* 1651, demise the same to the other plaintiffs, *Trott* and *Muryal*, for twenty years, under a certain rent ; who, being so possessed, made, in *March* 1652, a lease of the same to the plaintiff *Burton* and others for seven years, who thereby became possessed, and have since received most part of the tithes, and ought still to receive the same for the remainder of the said term ; that the defendants, for several years past, had been seised of land, arable, meadow, and pasture, within the said parish, and the precincts thereof, and had wheat, barley, and other grain, and also divers calves, colts, and pigs, and much wool, milk, butter, fruit, and other titheable property, by which they raised great profits, and ought to have paid tithes for the same to the said plaintiff *Burton* and others in kind, or otherwise to have satisfied the same ; that the defendants, having got the said last-mentioned leases to defeat the plaintiffs of their said tithes,

The plaintiffs
demand tithes
of lands lying in
the parish of
Sedbergh, in the
county of *York*.

do

TRINITY
COLLEGE,
CAMBRIDGE,
AND OTHERS,
against
WYN.

do refuse to pay or satisfy the plaintiffs for the same. The bill therefore prayed, that the defendants might answer the premises, and set forth the quantities, numbers, and value of their tithes, and be decreed to pay the arrears of the same, and for the future.

The defendants
plead, that the
lands they occu-
py lie in the
parish of *Dent*,
and not in the
parish of *Sed-*
bergh.

The defendant answered, and said that the plaintiffs had before filed their bill in this court against the said defendant and others, and thereby set forth their title to the said tithes and rectory; that they had denied that the lands or the tithes demanded of them were within the parish of *Sedbergh*; and that, upon full hearing, the said defendants were dismissed with costs. They further said, that they knew not that the rectory of *Sedbergh* was parcel of the priory of *Coverham*, or of the grant thereof, nor of the demises to *Trott* and *Muryal*, or to *Burton* and others; and denied having the said leases: and all the defendants said, they lived and occupied lands in the parish of *Dent*, which was a distinct parish of itself, and had a minister, and tithes thereunto belonging; and that all their lands did lie in *Dent*, and not in *Sedbergh*, nor had they any lands belonging to the late priory of *Coverham*; and therefore they were not chargeable to pay tithes in respect of the rectory of *Sedbergh*.

The plaintiffs replied; and witnesses were examined on both sides.

The Court in-
clined to direct
an issue.

Upon reading the afore said letters patent, and the depositions of several witnesses taken in the cause, the Court, before any final decree was made, inclined to have had a *trial at law*, whether *Dent* was parcel of the rectory of *Sedbergh*? and after trial had, to resort back again to the Court.

But on reading
an ancient deed
which had been
erased, and *Dent*
inserted instead
of *Sedbergh*,

But after long debate had thereupon, and several ancient deeds and writings being produced by the plaintiffs, and, among the rest, an ancient deed indented of composition, with a schedule thereunto annexed, made the twenty-seventh of *March* 1505, and read in court; and by comparing the same with the rest of the said deeds, the court was satisfied that the tithes of *Dent* do belong to the rectory of *Sedbergh*, notwithstanding the several erasures in the third line of the said deed; for it appeared to the Court, upon the view and contents of the said deeds, that the words "*Dent*" and "*Gandall*" were inserted instead of "*Sedbergh*" and "*Dent*."

the defendants
are ordered to
pay their tithes
to the plaintiffs.

THE COURT, therefore, declared, that they think it fit that the said defendants should, from the time complained of in the said bill, and for the future, pay their tithes of corn and hay arising within *Dent* afore said to the said plaintiffs or their farmers, in such manner as by the said ancient composition is agreed upon; which deed is annexed to the decree. AND IT IS FURTHER ORDERED, that the said defendants, and every of them, do and shall pay to the said plaintiffs their former tithes from the time complained

complained of in the bill, and of wool, and lamb, and kine, for the future, and all arrears for the tithes of wool and lamb according to the proofs; and it is referred to the auditor to cast up the same.

TRINITY
COLLEGE,
CAMBRIDGE,
AND OTHERS,
against
WYN.

MATTHEW HALE, *Chief Baron.*
EDWARD ATKYNS, *Baron.*
CH. TURNOR, *Baron.*

WILSON *against* REDMAN and Others.

MICH. TERM,
22. CAR. 2.

Yorkshire, 26th November 1660.

THE bill stated, that *Henry Wilson*, deceased, was, on the twenty-ninth of *August 1639*, seised in fee, of some estate for one or more life or lives in being, of the impropriate rectory of *Horton*, in *Ribleddale*, and of all the glebe lands, and tithes thereto belonging; and also of certain lands, tenements, and tithes, with the appurtenances in *Becroft*, *Horton*, and *Ribleddale*; and being so seised, by will, dated the twenty-ninth of *August 1639*, devised all his interest therein to the plaintiff and his heirs for ever, with a payment out of it of one hundred pounds to *H. Power*; that the said testator soon after died, seised of the premises; that, the plaintiff being then an infant, the said *H. Power* entered at the end of three years after the testator's death into the premises, for want of payment of the said one hundred pounds, and enjoyed the same until the second of *February 1656*; that, the plaintiff being so entitled to the said rectory and tithes, he and the said *H. Power* yearly received the profits and tithes of most of the inhabitants there; and that the plaintiff ought still to receive the same. The bill then set forth the custom of tithing there to be, "every tenth stack of corn; for the offering of every inhabitant, three halfpence; every tenth calf; for the milk of every cow renewed, twopence; for every fowl, one penny; swarm of bees, one penny; for the milk of every tenth ewe, one penny; every lamb, and for every six lambs, half-a-lamb, or the value thereof, and a whole lamb, as four, seven, and more, the rector paying back so many halfpence as the number falls short of ten, and the inhabitants to pay one halfpenny for every lamb under six." It also stated the like tithing for fleeces of wool, and after the same rate for greater or lesser numbers of the titheable things there renewed. It also stated, that "hemp and flax paid the tenth part in kind; for every seventh, eighth, and ninth chicken, one penny; and after the same rate for eggs, geese, ducks, and pigs; for every garden, one penny; for every plough, one penny, called *plough penny*;" and certain sums in lieu of tithe hay which he could not particularly set forth. It then alledged, that the defendants had been for twelve years past inhabitants thereof; that they had great store of corn, lamb, wool, calves, and other titheable

The plaintiff,
as impropriator
of the rectory
of *Horton*, states
his title to the
impropriation,

and sets out a
particular cus-
tom of tithing.

WILSON
against
REDMAN.

able things yearly renewed there ; but that they refused to pay tithes for the same, or to make any satisfaction for the same. The bill therefore prayed, that the defendants might account for their tithes for the said years, and pay the plaintiff the values and arrears thereof.

The defendants deny the plaintiff's title, and say, if any tithe is due from them, it belongs to the vicar ;

The defendants denied the plaintiff's title, as also the custom as stated ; but alledged, that if any thing be payable for hay, milk, plough, garth, fowls, kine, penny offerings, eggs, or chickens, the said is due and payable to the vicar of *Horton*, and not to the impropiator. They also denied having in their hands any books, rentals, or other writings belonging to the rectory ; and stood upon their own right to be discharged against the plaintiff for payment of tithes renewed upon their lands ; and they set forth the time they severally held their particular messuages and tenements ; all which several premises so held by them they alledged, had, time out of mind, been part of the *demesne* of the manor of *Horton* (except the defendant *Horton's* tenement) ; that the manor, rectory, and water-corn-mill of *Horton* were all heretofore parcel of the possessions of the late dissolved monastery of *Jervaux*, in the county of *York*, which was of the *Cistercian order* ; that the several abbots of *Jervaux* were, time out of mind, seised in fee of the said manor, rectory, and premises, and held the same in their own hands together ; and that, the late abbot being so seised, the same monastery came to KING HENRY THE EIGHTH by the dissolution of monasteries ; who, being so seised, by letters patent, dated about the thirty-sixth year of his reign, granted the same to the *Earl of Lenox* and his wife, and their heirs, at eighty pounds, nine shillings, and eightpence yearly rent reserved to the crown ; and from the said *Earl of Lenox* the defendants derive their tenements ; and they set forth the same, and the quantities of their titheable matters.

but they discharged their lands from tithes, as having been parcel of the monastery of *Jervaux*, of the *Cistercian order*.

The plaintiff replied ; and witnesses were examined on both sides ; and upon full hearing,

An issue directed to try, whether the lands did belong to a monastery of the *Cistercian order* ;

and the defendants to give security in double the value of their tithes.

Forasmuch as the defendants do, by their answer, confess the subtracting of the tithes demanded by bill, and insist upon a discharge ; for that the lands they held are pretended to be parcel of the *demesnes* of the late abbot of the late monastery of *Jervaux*, and that the said monastery was of the *Cistercian order*, this Court doth not think fit to decree the said tithes to the plaintiff until a *trial at law* be had thereupon ; but in the mean time, this Court doth think fit that the defendants shall give security for the values of the arrears of their tithes for twelve years past, in case a verdict shall go against them, according to the several particulars in their answers mentioned and proved in the books, according to the custom of tithing set forth in the bill.

IT IS ORDERED by the Court, that the plaintiff shall bring his action against *Lawrence Burton*, one of the defendants, by consent, upon

upon the statute 2. & 3. *Edw. 6. c. 13.* for not setting forth his predial tithes for the years 1659 and 1660 ; at which trial the said defendant is. by consent, to admit the plaintiff to be proprietor of the tithes; and that he, the said defendant, is occupier of the land in question, and that he hath refused to set forth the tithes in the said years, and to insist only upon the said discharge ; and as the trial shall go for or against the said defendant for the said great tithes, all the defendants (except *Roger Procter*) are thereby to be concluded for all the tithes in question. The equity of the cause to be reserved ; and the defendants to give security for double the value of their tithes, except the defendant *Procter*.

WILSON
against
REDMAN.

A trial at law was accordingly had, and a verdict given for the defendants ; and, upon the prayer of the defendants' counsel, and upon reading the said order, *postea*, and depositions taken on the plaintiff's part, and some of the defendants answers,

18th Nov. 1661.
A verdict for
the defendant.

IT IS ORDERED BY THE COURT, that all the defendants (except *Procter*) shall be dismissed this court of and from the said bill, and their recognizances discharged ; and that the defendant *Procter* pay to the plaintiff sixteen shillings for his tithes confessed in his answer to be due for the same.

The bill dis-
missed.

BURGIS, Clerk, against DIAMOND.

HILARY TERM
12. CAR. 2.

Devonshire, 7th February 1660.

THIS was a bill touching tithes for the depasturing of barren and unprofitable cattle upon the lands in the defendant's occupation within the parish of *Aisbprington*.

Tithes are due
of common
right for the
depasturing of
barren and un-
profitable cattle,
unless employed
in husbandry, or
the service of the
family.

The cause came on to be heard this day ; and upon reading the bill, and the depositions of divers witnesses, and upon much debate,

THE COURT was of opinion, that tithes, of common right, are due to the plaintiff for the pasturage of such barren and unprofitable cattle as yield no tithes, unless they are reared and employed for the plough, the pail, the saddle, or spent in the family, in the same parish.

But because the plaintiff, by his bill, demanded the tenth part of the profit made upon the sale of such barren cattle so depastured, upon pretence of a custom which he hath not at all proved,

But the plaintiff
having set up a
pretended cus-
tom,

IT IS THEREFORE ORDERED BY THE COURT, that the said defendant be, and he is hereby dismissed out of this court of and from the said bill, and the matters therein contained, with twenty pounds costs.

the bill is dis-
missed with 20l.
costs.

TRIN. TERM,
23. CAR. 2.

PyOTT *against* GEARY.

Hertfordshire, 17th June 1661.

The plaintiff claims the tithes in kind of *Tring*, in *Hertfordshire*. **T**HIS was a bill, by the farmer of the impropriate rectory, touching tithes, within the parish of *Tring*, in *Hertfordshire*; which, by an order of the twenty-eighth of *January* last, was referred to a trial at law, upon certain customs or *modus* of manner tithing set forth in the answer.

The plaintiff, in obedience to the said order, filed his declaration; but the defendant did not entered his appearance; and, on the twenty-second day of *May* last, the cause was set down for further hearing; and now upon further hearing this day by the plaintiff's counsel, and no counsel appearing for the defendant, it was ordered, that a commission shall be awarded to prove the value of the tithes, unless cause were shewn to the contrary, the said defendant first paying twenty shillings costs for this day's attendance.

1st July 1661.
The defendant states a *modus* in lieu of tithes in kind.

The defendant now shewing cause, prayed, that there might be a trial had upon the customs; which is ordered, by consent, accordingly; and also, to avoid the expence and trouble of a commission to prove the values, that the defendant shall pay to the plaintiff three shillings for his tithes of calves; one shilling and sixpence for his tithe of lambs; six shillings for his tithe of milk; and two shillings for his tithe of wool, in case he shall not prove the customs set forth in his answer. The equity of the cause to be reserved.

A trial at law, and verdict for the plaintiff.

A trial being had, and a verdict given for the plaintiff,

21st April 1662. IT IS ORDERED BY THE COURT, that the defendant shall forthwith pay to the plaintiff the aforesaid sums for his tithes of calves, lambs, wool, and milk, according to the said order.

HALE, Chief Baron.
ATKINS, Baron.
TURNOR, Baron.

TRIN. TERM,
23. CAR. 2.

DEVEREAUX, Clerk, *against* RADLEY.

Essex, 1st July 1661.

The vicar of *Canewdown*, in *Essex*, claims, by custom, 3s. 6d. in the pound on the rent of certain marsh lands in lieu of the tithe of the herbage of the said lands. **T**HE bill set forth, that for two years past the plaintiff hath been vicar of the vicarage of *Canewdown*, in the county of *Essex*, and entitled to have and receive tithe of herbage, and all other *small tithes*, of what kind soever, growing &c. within the said parish, or the bounds and precincts thereof, or to have other customary duties in lieu of tithes, by prescription, custom, or endowment; that the defendant, for five years past, had been farmer of a marsh and pasture grounds there, containing seven

hundred acres, and had fed thereon great stores of cattle ; that he withholds from the plaintiff the tithes and customary dues for the said cattle, and all other tithes ; that every farmer of lands, when depastured with cattle within the said parish, have used to pay to the vicar there three shillings and sixpence in the pound for every pound the lands are rated at, in lieu of tithe herbage, or some satisfaction for the same ; that the defendant, being occupier of the said marsh for two years past, at the rent of two hundred and ten pounds a-year, did depasture thereon divers cattle, for which there is due yearly to the plaintiff three shillings and sixpence in the pound ; which the defendant refused to pay : and therefore he prayed a discovery and satisfaction for the same.

DEVEREAUX
against
RADLEY.

The defendant confessed, that he holds lands which lie, part in *Caneudown*, and part in the parishes of *Althorne* and *Crivvy*, at the yearly rent of two hundred and twenty pounds ; and that the land lying in *Caneudown*, is yearly worth two hundred pounds a-year ; that he hath rented the same for twenty-four years past, during all which time he hath usually paid to the vicar thereof twelvepence in the pound for every yearly pound rent ; and that he usually paid the vicar yearly eleven pounds, and no more, being twenty shillings more than the twelvepence in the pound which was always received by the former vicars ; and that the usual payment for marsh land, which was grazed, was no more, and which he was willing to pay : and he set forth number of cattle he fed thereon.

The defendant says, that the usage has been to pay only 1s. in the pound, and 11. over.

The plaintiff replied ; and witnesses were examined on both sides.

Upon opening the pleadings, and reading the depositions of several witnesses in the said cause ;

For that it appeared that the pastures whereof the tithe herbage are demanded, during one year and a half, were wholly depastured with barren cattle, and such as yielded no titheable profit ; and consequently, of common right, tithe herbage is due for the same ; and forasmuch as it appeared, that the said pastures are and have been usually let for two hundred pounds *per annum*, and consequently, in an ordinary estimate, the tithe herbage of the pastures aforesaid, being so employed as aforesaid, amounts yearly to twenty pounds, *viz.* two shillings for every twenty shillings ; and according to such rate the tithe herbage hath been usually rated and paid in the said parish when the pastures or marshes have been so fed and depastured ;

But as it appeared, that the tithe of herbage, when depastured with barren cattle, was, in the said parish, usually compounded at 2s. in the pound,

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff thirty pounds, in lieu of tithe herbage for the said marsh or pasture grounds held by him within the said parish, for one year and a half, which is according to the rate of

the defendant is ordered to pay 2s. in the pound accordingly.

DEVEREAUX two shillings in the pound, by the year, for every pound rent the said lands are rented at, the same being rented at two hundred pounds *per annum*.
against
RADLEY.

TRIN. TERM,
14. CAR. 2.

THOMPSON, Clerk, against GRAY.

Northamptonshire, 16th June 1662.

The customary manner of taking small tithes and oblations in the parish of **PRESTON** Copes, in the county of *Northampton*; that there was due to him, by ancient custom within the said parish, for every man and his wife receiving the sacrament, and being an inhabitant therein, and for their offerings at *Easter*, twopence; and for every single person one penny; that the tithes of pigs, bees, honey, onions, carrots, parsnips, turnips, and eggs, did belong to him, and ought to be paid, that is to say, out of every ten pigs, one; out of every seven pigs, giving three halfpence to the owner, one; for every pig under seven, an halfpenny; out of honey, every tenth pint; and the full tenth part of all onions, carrots, parsnips, and turnips, growing within the said parish; for every cock, three eggs; and for every hen, two eggs, kept therein; that the defendant was an inhabitant in the parish; that he, his wife, and servants, had received the sacrament for three years past; and that he ought to pay in every of the said years for himself and wife twopence, and for his servants threepence, for their offerings at *Easter*.

The defendant denied the custom for oblations, and stated, that he lived in the parish of *Little Preston*; for the tithes whereof he set forth an agreement, and also some particular things whereof tithes were due.

THE COURT ordered the defendant to pay to the plaintiff three shillings for the small tithes, and forty shillings for costs.

HILARY TERM
14. CAR. 2.

PAGE, Clerk, against BROWN.

Lincolnshire, 9th February 1662.

The tithes of wool and lamb are due to the rector of **FOLKINGHAM**, in the county of *Lincoln*, exhibited his bill in the exchequer touching the tithes of wool and lamb due to the plaintiff, as rector thereof.

THE COURT directed an issue, to try, whether the tithes of wool and lamb are due to the plaintiff, as rector of the said parish, or not; and on the trial, a verdict was given for the plaintiff; and on reading the *posse*,

IT IS ORDERED BY THE COURT, that the tithes in question shall be decreed to the plaintiff, and that the defendant shall pay to the plaintiff seven pounds, ten shillings for the value of his tithes due.

PAGE
against
BROWN.
3d June 1663.

HAYES, Clerk, *against* COX.

HILARY TERM
14. CAR. 2.

Hampshire, 9th February 1662.

THE bill prayed to be relieved for the tithe of lambs fallen within the parish of *Nether Wallopp*, and due to the plaintiff, as vicar of the said parish, for two years past.

The whole tithe in kind of lambs fallen in the parish of *Nether Wallopp* is due to the vicar.

The defendant denied, that the vicarage is endowed with more than half the tithes of the said lambs, which, he said, he had offered, *viz.* two shillings and sixpence for every twentieth lamb.

See the case of *Hill v. Maton*, Trinity Term,

THE COURT directed a *trial at law*, in which the plaintiff shall declare, that *the whole tithe* of and for lambs fallen within the said parish of *Nether Wallopp* is due to the vicar of the said parish; to which the defendant shall plead, that *one half of the tithe* of and for lambs fallen within the said parish, is due to the said vicar, and the other half of the said tithes to the impropriator, WITHOUT THAT, that the whole tithes of and for lambs fallen within the said parish are due to the said vicar; the equity of the cause to be reserved to this court.

7. Geo 3 on a bill filed by the vicar of the same parish.

Upon which issue a trial was had, and the plaintiff was nonsuited, because the plaintiff had laid in his declaration, that the whole tithe of and for lambs, was due to the vicar; and all the plaintiff's evidence testified, that a *composition* in lieu of tithe lambs was always paid to the vicar, and not any part thereof to the impropriator.

30th May 1663.

It was therefore prayed, that, on the plaintiff's paying the costs, the issue might be amended in that particular, and a *new trial* had.

THE COURT, by the consent of both parties, directed a *new trial*, and that the plaintiff shall declare, that the whole tithe of lambs, or a composition for the whole tithe of lambs, doth belong to the vicar of the said parish; to which the defendant shall plead, that the one-half of the said tithe lambs, and the one-half of the composition for tithe lambs, is due to the impropriator, WITHOUT THAT, that the whole tithe of lambs, or a composition for the whole tithe of lamb, doth belong to the vicar of the said parish: and the defendant to have his costs of the former trial.

On the second trial the jury found, that the whole tithe of lambs within the parish of *Nether Wallopp*, and within the bounds, limits, and titheable places of the same parish, yearly coming,

12th May 1664.

HAYES
against
Cox.

coming, &c. or a composition for the same, are, and time beyond the memory of man have been, due and payable to the vicar of the said parish, as by the *postea* appeared.

THE COURT, after hearing counsel on both sides, ordered the defendant to pay five pounds to the plaintiff, being the value of the whole tithe of his lambs confessed in his answer to have fallen within the parish during the year.

HILARY TERM
14. CAR. 2.

HASTINGS, Widow, *against* GOLDWYER.

Hampshire, 18th February 1662.

Small tithes due
to the rector of
the parish of
Milton.

THIS was a bill touching the tithes of calves, milk, wool, lamb, fruit, and other *small tithes*, belonging to the plaintiff, being owner of the rectory and impropriate parsonage church and chapelry of *Milton*, parcel of the late dissolved priory of *Christ Church Twineham*, in *Hampshire*.

The defendants set up a composition for hay, wool, and lamb, and other small tithes.

THE COURT, after hearing counsel on both sides, not being satisfied of the plaintiff's title, ordered a feigned action on the case, in which the defendant shall wholly insist on the plaintiff's title to the small tithes; the vicar of *Milton* to make defence, if he thinks fit; and the equity to be reserved till after the trial.

27th April 1665. In pursuance whereof a trial was had, and a verdict given for the plaintiff.

Now the cause came on this day; and no counsel appearing for the defendant, and upon examination of *G. Hastings*, being present in court, as to the value of the tithes detained by the defendants.

IT IS ORDERED BY THE COURT, that the said defendants shall pay to the plaintiff the value of their small and privy tithes due to him, as valued by the said *G. Hastings*, in the whole to three pounds five shillings, with his costs in equity and at law, unless cause be shewn to the contrary.

HALE, Chief Baron.
ATKINS, Baron.

EASTER TERM
16. CAR. 2.

CROSSMAN, Clerk, *against* WALKER and Others.

Somersetshire, 12th May 1664.

The plaintiff, as
rector of *Back-
well*, in *Somerset-
shire*, claims
tithe of hay.

THE plaintiff, as rector and parson of the parish-church and parsonage of *Backwell*, in the county of *Somerset*, filed his bill touching tithes due to him within the said parish.

THE

THE COURT ordered a trial at law upon the statute 2. *Edw. 6. c. 13.* for not setting forth the *tithe hay* in *Land Mead* and *Moor Mead*, and a special action on the case for the *garden tithes*; the actions to be brought against the defendant *Lovell*, and all the defendants are to make what defence they can, and to be liable to the payment of costs; and they are to be, by consent of counsel on both sides, bound by those trials; the defendant, at the trial for *tithe hay*, to confess, that the plaintiff is parson, and that the defendant is occupant of *Land Mead* and *Moor Mead*; and also to confess the not setting forth of the tithes; and to insist only upon the custom of twopence an acre for *Land Mead*, and one penny an acre for *Moor Mead*. The equity of the cause to be reserved till after the trial.

CROSSMAN
against
WALKER
AND OTHERS.

An issue directed to try, whether there is a custom of 2d an acre for *Land Mead*, and 1d. in acre for *Moor Mead*, in lieu of tithe hay.

Upon which order an action was brought on the statute 2. *Edw. 6.* for not setting forth tithe hay in *Land Mead* and *Moor Mead*; and, upon full evidence, a verdict passed for the plaintiff against the said custom of twopence an acre.

29th June 1667.
A verdict for the plaintiff.

The cause came on to be further heard on the seventeenth of February 1665; and, upon reading the verdict, and hearing counsel,

THE COURT decreed the arrears of tithe hay to be paid to the plaintiff.

But the value being uncertain, a commission issued to ascertain the same; which being returned, the cause came on for further directions: whereupon

By an order made 7th July 1666,

IT IS ORDERED BY THE COURT, that the defendants shall pay to the plaintiff the several sums certified due to him for tithe hay after the rate of one shilling and sixpence per acre for the said ten years, amounting to one pound, two shillings, and sixpence.

the tithes of hay decreed, at the rate of 1s. 6d. an acre.

HALE, Chief Baron.
TURNOR, Baron.
RAYNSFORD, Baron.

FANE, Knt, against MARTIN.

Gloucestershire, 27th April 1665.

EASTER TERM
17. CAR 2.

THE bill stated, that the plaintiff was owner or proprietor of the rectory or rectories of *Westbury upon Trim* and *Fenbury Saltmarsh*, and of all tithes, duties, payments, and profits to the same belonging; that all the tithes of corn, grain, hay, wool, lamb, cows, calves, and other tithes, as well great as small, within the said rectories and titheable places thereof, have been paid, from time to time, to the proprietors and owners thereof, and therefore ought to have been paid to the plaintiff for three years past, as in the bill is mentioned.

The rector of *Westbury* and *Fenbury*, in the county of Gloucester, claims tithe of hay, corn, &c. in kind.

FANE
against
MARTIN.
 The defendants
 admit his title
 to tithes, but set
 up a *modus* of
 2d. an acre in
 lieu of tithe hay.

The defendants plead, as to the tithe hay demanded in kind, that within the said parish of *Westbury* there is a custom, whereof the memory of man is not to the contrary, that the possessors of lands within the said parish have accustomed to pay to the rector or owner, yearly, or at any time afterwards, upon request, after the rate of twopence an acre, in lieu of tithe hay; and that the said rectors and owners have received and accepted the same accordingly. They state also, that the said plaintiff was, they believed, for seven years past, owner of the said rectory of *Westbury*, and intitled to all the duties and payments; and that all the said tithes, duties, and payments (except tithe hay), have always been paid in kind, or satisfaction made for the same; and that they are ready and willing to pay the said customary payment for the tithe hay.

To which plea and answer the plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing the said cause,

An issue directed to try the *modus*.

THE COURT, as to the said *modus*, ordered a *trial at law*; and as to the tithes confessed to be due to the plaintiff, that the same shall be referred to the auditor of the county to compute and cast up the same, and return his certificate to the court.

24th Jan. 1666.
 A verdict for the plaintiff.

An action was accordingly brought, and tried at the bar of this court; and, upon full evidence, a verdict given for the plaintiff, that there was no such custom within the said parish of *Westbury*, whereof the memory of man was not to the contrary, that the possessors of lands within the said parish were accustomed to pay to the rector or owner, yearly, or at any time afterwards, upon request, after the rate of twopence in the acre in lieu of tithe hay, or that the said rectors or owners did receive or accept the same, accordingly in lieu of tithe hay.

It was referred to the auditor of the county to compute the value of the tithes; and upon the return of his certificate,

13th June 1667.
 The tithes decreed in kind.

IT IS ORDERED BY THE COURT, that the said certificate shall be confirmed; and that the defendants shall pay the several sums of money certified due, being in the whole ten pounds, ten shillings, and sixpence.

HALE, *Chief Baron*.
 TURNOR, *Baron*.
 RAYNSFORD, *Baron*.

INGLEBY

INGLEBY, Knt. *against* WYVELL.EASTER TERM
18. CAR. 2.*Yorkshire, 22d May 1666.*

THIS cause came on to be further heard this day (a). The scope of the bill was, to be relieved for the tithes of *Stenningforth*, as proprietor of the prebend of *Studley*, late parcel of the late dissolved collegiate church of *Rippon*. The prebend of *Studley*, in the county of *York*, discharged from the payment of tithes, as having formerly belonged to the abbey of *Fountains*.

The defendants alledged, that they were discharged from the payment of tithes, for that the lands which they hold in *Stenningforth* belonged to the abbey of *Fountains* before the second council of *Lateran*; which abbey was of the *Cistercian* order. See S. C. Hard, 381.

And because it appeared to the Court, upon several hearings of the said cause, that there had been several trials at law, and verdicts on both sides; and upon the plaintiff producing in court an ancient composition between the abbot of *Fountains* and the church of *Rippon*, and moving to have *another trial* at the bar of the court, by which he would be concluded, IT WAS ORDERED, on the sixth of *February*, that the defendants should set forth the tenth lamb and a tenth sheaf; and the plaintiff bring his action of trover and conversion against the defendants for the same; the venue to be laid in the county of *Middlesex*; and both sides, by consent, to admit the said setting forth, and also the trover and conversion, and to insist only upon the right.

The defendants counsel now informing the Court, that a trial had been accordingly had, and a special verdict found (b), and final judgment given thereon; and praying that the defendants might be dismissed;

IT IS THEREUPON ORDERED BY THE COURT, that the defendants be and stand dismissed this court of and from the said bill, and the matters and things therein contained, without prejudice to the plaintiff's *modus*.

(a) See ante, page 24.

(b) See the special verdict given in this case, and stated at length, with the arguments of counsel, and the judgment of the Court, Hardres, 381 to 387.— See also the case of the Dean and Chapter

of *Rippon*, post. 23d February 1756, in Hilary Term, 29. Geo. 2. and the Dean and Chapter of *Rippon* v. Parker, post. 11th February 1780, in Hilary Term, 20. Geo. 3.

TULLY,

EASTER TERM
18. CAR. 2.

TULLY, Clerk, *against* HALSALL and Others.

Durham, 17th May 1666.

The rector of *Middleton* claims the tithe of *lead ore* dug in *Teasdale Forest*, according to the custom of tithing therein.

1. Chan. Cases, 272. 282.

2. Vern. 46.

See the case of *Baſire v. Whar-ton*, post. Mich. Term, 19. Car. 2. post.

THE plaintiff, as rector and parson of the parish-church and rectory of *Middleton*, in *Teasdale*, in the county of *Durham*, exhibited his bill in this court, the scope of which was, to have the tithe or tenth part of *lead ore* digged and gotten in a certain large waste, moor, or common, lying within the said rectory, and the precincts and titheable places thereof, called *Teasdale Forest*, and in other grounds within the rectory, according to a certain ancient custom and usage therein, and in the titheable places thereof, time out of mind used and approved of, and which tenth part had, from time to time, been severed and divided from the residue thereof, and paid and delivered at the groves or pits where the same was wrought or gotten, by the owners of the said lead-mines and their farmers, servants, or agents, to the parson of the said rectory for the time being, or his farmers or agents, for the tithe thereof. The bill further stated, that the defendants are owners or farmers of lead-mines within the said rectory, and do pretend that forty shillings a-year is due to the rector there, by ancient composition, in lieu of the tithes of the said *lead ore*. The bill therefore prayed a discovery, whether any tithes be due, and in what quantities.

The defendants admit they dig ore in *Graſs Grove* and *Pickloom*, within the said forest, but deny the custom to tithe the ore,

The defendant *Halsall* answered, and made a title to himself of the liberty of digging pits within the said forest; and that he, with others, about four years since, let the mines called *Graſs Groves* and *Pickloom Groves* to three of the defendants, for a yearly rent; and, therefore, the plaintiff cannot demand any tithe of him, if any be due.

The defendant *Rae* disclaimed that he had any part or portion in the said lead mines or lead ore, and said, that he only acted as a workman.

because those places were the king's ancient demefne.

The other defendants, *Briggs*, *Gray*, and *Bacon*, said, that the said forest is the king's *ancient demefne*, and that they had been farmers of the said mines for three years past; they denied the custom, or that they pretended any composition of forty shillings a-year; and said that it was a voluntary gift to the rector, and not in lieu of any tithes.

The plaintiffs replied; and witnesses were examined on both sides.

Three issues directed to try the custom.

Upon reading the depositions of several witnesses, and other evidences on the behalf of the plaintiff, and on long debate thereon, for that the said defendants, by their answers, had denied the said custom, IT IS ORDERED BY THE COURT, that it be referred to a *trial at law* upon these issues, against the defendants *Briggs* and others.

FIRST,

FIRST, Whether there be a custom within the parish of *Middleton*, in *Teasdale* aforesaid, to pay to the parson there, for the time being, tithes in kind of lead ore gotten within or out of the said *Grafs Groves* and *Pickloom Groves*, or either of them? and that if there be any such custom there, then,

TULLY
against
HALSALL
AND OTHERS.

SECONDLY, Whether the said custom be to pay the said tithes, without deduction of all manner of charges for digging, winning, and getting the said ore? or,

THIRDLY, With deduction of all manner of charges for digging, winning, or getting the said ore?

And as to the king's interest, the king's counsel may interpose if they please: and the equity to be reserved till after such trial had.

Upon which three issues a trial was had, and the custom found for the plaintiff, upon the said several issues, as to *Grafs Groves*, but not as to *Pickloom Groves*; for that no lead ore, at any time within the memory of man, had been gotten out of the said *Pickloom Groves*, to the knowledge of the jurors then impannelled to try the said issues.

26th Nov. 1666.
A trial had, and a verdict found for the custom as to *Grafs Groves*.

The plaintiff's counsel therefore prayed a decree as to the tithes of lead ore within the several pits called the *Grafs Groves*, for which the plaintiff had a verdict.

Upon reading the said order and *posse*,

IT IS ORDERED BY THE COURT, that the said defendants, *Briggs, Gray, and Bacon*, shall forthwith pay to the plaintiff, as rector of the parish-church of *Middleton* aforesaid, one hundred and twenty pounds clear, in full of the tithes of lead ore complained for in his bill, and also in full for his costs of suit.

Tithes of ore dug in *Grafs Groves* decreed.

THE COURT FULL.

FOSTER, Clerk, against CHINOR.

Somersetshire, 14th May 1666.

EASTER TERM
18. CAR. 2.

THE bill stated, that in the year 1645 the rectory of *Aller* was sequestered from the plaintiff, then in the actual possession thereof; and that one *John Moore*, clerk, by colour of some pretended order of the then parliament, officiated there, and enjoyed the profits thereof, until he was removed, and the plaintiff restored again by act of parliament made in the twelfth year of his present majesty's reign; and that he has ever since officiated there; that there had been and was an ancient custom and usage in the parish of *Aller*, that every person being an out-dweller, and not an inhabitant there, who rented any meadows or pasture grounds in the said parish, lying in a level called *Aller Moor*

A custom alleged, and proved, that out-dwellers who rent lands in *Aller Moor*, in the county of *Somerset*, shall pay to the rector a tenth part of their rent, at *Easter*, in lieu of tithes.

(except

FOSTER
against
CHINOR.

(except *Court Farm* and *Beere Farm*), had alway paid, and ought to pay, yearly, to the rector for the time being, the tenth part, or full value of the tenth part, of all such rent and money as such persons did pay or contract for to such as let the same, in lieu of tithes; the same to be paid yearly at *Easter* after the end of every years in which the same meadows or pasture were so rented or enjoyed, and not before; that the defendant being then an out-dweller, and not an inhabitant of the said parish, did, in 1660, rent and enjoy thirty-two acres of meadow and pasture ground in the said level, called *Aller Moor* (and no part of the two excepted farms), at twenty-eight pounds *per annum*; for which year, by the custom aforesaid, he ought to have paid the plaintiff at *Easter* after the year ended in 1661, fifty-six shillings in lieu of tithes; but that he refused to pay the same; and therefore the plaintiff prayed relief in the premises.

The defendant
admits the facts,
but denies the
custom.

The defendant answered, and confessed that in the year 1660 he was an out-dweller from the parish of *Aller*, and rented of several persons thirty-one acres of meadow and pasture, at twenty-seven pounds *per annum*; that the time for which he rented the same commenced at *Christmas* 1659, and expired at *Martinmas* 1660; and that the same lands did lie in *Aller Moor*, and were no part of the said two excepted farms; that he believed the tithes, or composition in lieu thereof, amounted to two pounds sixteen shillings, which he paid to the said *John Moore*, pursuant to a writing subscribed by the plaintiff, by which he desired all the parishioners, and others from whom tithes were due for the year 1660, to pay the same to the said *John Moore*, and he averred the said *John Moore* had accounted with the plaintiff for the moiety of the defendant's tithes, and that the plaintiff had accepted thereof; that he knew not of any usage or custom of paying for *agistment tithes*, or of the tenth of the rent, by out-dwellers at *Easter*, and not before; but had heard that tithes were payable fourteen days after *Michaelmas* in the year the lands are rented; which was a further reason for his paying the said tithes to the said *John Moore*.

The Court of
opinion, that the
custom was fully
proved.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the depositions, and long debate, for that the custom laid in the bill, that the out-dwellers who rent any lands in *Aller Moor* have used and ought to pay to the minister there, for the tithe thereof yearly, so much money as the tenth part of the yearly rent of the land they so hold amounts to, the same to be paid every year at *Easter* only, and not at any other time, for the tithes accrued for the year then past, is fully proved.

The tenth part
of the rent de-
creed.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff two pounds sixteen shillings charged in the bill for the tithes of the lands he held in *Aller Moor* aforesaid in 1660, which he ought to have paid him at the feast of *Easter* 1661.

THE COURT FULL

WATTS, Clerk, *against* MELDEN.MICH. TERM,
18. CAR. 2.*Kent, 25th October 1666.*

THIS was a bill to be relieved concerning tithes, of underwood felled and made up into faggots and bavins, within the parish of *Swancombe*, in the county of *Kent*; and also for the tithes of the herbage of fatted cattle, of cows, of calves, of wool, and of lamb, and other *small tithes* arising therein, and detained by the defendant from the plaintiff.

The rector of *Swancombe*, in *Kent*, is intitled to tithe of underwood, herbage, ewes, lambs, and wool, in kind

The defendant alledged, that there was and is a custom of tithing wood felled and cut down within the said parish at five shillings an acre; and that time out of mind there hath been a composition of paying, in lieu of that custom, for the defendant's wood by the load, viz. for faggots, threepence; for great bavins, one penny; and for small bavins, one halfpenny: and likewise a custom for the tithe of dry cattle yearly, twopence a head; for a cow and a calf, tenpence; and for every ewe and lamb, sixpence.

A *modus*, and a composition in lieu thereof, stated.

The plaintiff replied; and divers witnesses were examined on both sides; and upon hearing counsel, and reading the depositions taken in this and in a former cause (a); and upon long debate,

THE COURT declared, that as to the tithe wood in question the same ought to have been paid in kind; and thereupon ordered, that it be referred to the auditor of the said county to compute and cast up the value of the titheable wood for the year 1664, according to the proofs in the books.

The Court declare tithe wood ought to be paid in kind.

And as to the *modus* of tenpence for the tithe of every milch cow and calf,

THE COURT, by and with the consent of both parties, ordered, that the same be paid accordingly.

(a) This cause was between the same parties. The plaintiff claimed tithes of underwood felled by the defendant, and the tithes of fatted cattle, and other cattle depastured by him in the parish. The defendant alledged a composition for the tithe of all underwood felled, viz. for every load of *Asbury* faggots, threepence, and for every hundred of great bavins, twopence, and of other bavins, one penny; and for every load of broom stands, threepence, and hoops, sixpence; and for every dry cattle, twopence; and for every cow and calf, tenpence; every sheep, twopence; and every lamb, fourpence. The plaintiff replied; and the defendant rejoined, stating a custom of five shillings an acre for every acre of

underwood felled. THE COURT ordered the rejoinder to be set aside, as being a *departure* from the answer; and that the defendant should pay eight pounds for his tithes for the year 1662, according to the value set forth in his answer; and also for tithe wood felled and carried away, the like sum for 1663, by consent of both parties; and for the tithes of dry and wet cattle according to the rates in the said answer, amounting to two poundstwelve shillings, without prejudice to any custom. This decree was made on the tenth of *November* 1664, in Mich. Term, 16. Car. 2. MS.—See also another cause between the same parties respecting the tithes of the wood in this parish, post. 21st June 1669, in 21. Car. 2

And

WATTS
against
MADDEN.

And as to the *modus* of tithes of lamb, wool, and herbage eaten by cattle for sale,

THE COURT ordered, that the same be referred to a *trial at law* upon a feigned issue; and the equity to be reserved.

25th May 1662. The auditor having returned his certificate, whereby the plaintiff did acknowledge he had received tithes of his cows and calves, and for the tithe of wood made into faggots, he did certify there was due to the plaintiff twelve pounds ten shillings for it; and also in pursuance of the said order,

An issue directed to try the *modus* respecting wool, lamb, and herbage.

A trial was accordingly had touching the tithe of wool, lamb, and herbage eaten by cattle for sale, upon the three following issues:

FIRST, Whether there hath been and is a custom within the said parish to pay to the rector every year twopence for the herbage of every beast fed for sale?

SECONDLY, Whether there hath been and is a custom to pay sixpence the year for every ewe and lamb?

THIRDLY, Whether there hath been and is a custom to pay twopence for the tithe wool of dry sheep?

A verdict for the plaintiff.

And upon full evidence on both sides, a verdict was found for the plaintiff, against all the said pretended customs.

The plaintiff's counsel therefore prayed, that tithe of the ewes, lamb, wool, and herbage, might be decreed for him.

Tithes in kind decreed to the plaintiff.

IT IS ORDERED BY THE COURT, that the tithes in kind of and for the herbage of cattle fatted for sale, and of wool and lamb, be paid to the plaintiff; that the defendant pay one pound, four shillings for tithes of wool and lamb; and three pounds for tithe herbage for 1664; and that the auditor's certificate be confirmed, and payment made of the twelve pounds ten shillings decreed for the tithe wood made into faggots for 1664.

EDW. ATKYNS.

CHR. TURNER.

HILARY TERM
18. CAR. 2.

FAWCETT, Clerk, against TENNANTS.

Norfolk, 31st January 1666.

The special manner in which *small tithes* are paid in the parish of *Boughton*, in the county of *Norfolk*.

THE scope of the bill was, to be relieved for small tithes in the parish of *Boughton*, in the county of *Norfolk*, for two years past. And now upon opening the bill and answer, the defendants in their answers set forth divers customary payments due and payable in discharge of tithes, that is to say, at *Easter* in every year twopence for the Easter offering for every communicant, and twopence in discharge of all tithes for fruit, herbs, and other things,

things, growing in the orchards, gardens, and pasture grounds ; and, at *Lammas*, being the first day of *August* in every year, one penny for every milch cow ; and one halfpenny for every calf, in satisfaction for all tithe for the herbage of all cows, bulls, and other neat cattle ; and one penny for every foal, in satisfaction for all the tithe for the herbage of all horses, mares, and colts ; and one penny for every lamb under the number of seven lambs ; but if there be seven lambs, or above, then a tithe lamb ; but then the vicar is to pay to such parishioner for every lamb above the number of seven, and under ten, one penny ; for the churching of every woman, sixpence ; and the defendants stating that they are willing to pay the said customary payments, and that they have tendered the same to the plaintiff accordingly.

**Fawcett
against
TENNANTS.**

IT IS ORDERED BY THE COURT, that the defendants be dismissed out of this court as to the said bill, and the matters therein contained.

**MATTHEW HALE,
CHR. TURNOR,
Rl. RAYNSFORD.**

KENT against WEBB and Others.

Hampshire, 6th May 1667.

**EASTER TERM
19. CAR. 2.**

THE plaintiff, as farmer of the appropriate tithes of *Itchenwell* and *Sydmontayne* hamlets, within the parish of *Kingscleere*, in the county of *Hants*, exhibited his bill against the defendant *Webb*, vicar of *Kingscleere*, and the defendant *Robert Lush*, as farmer of *Sydmontayne Farm*. The bill stated, that the *Marquis of Winchester*, being seised in fee of the said appropriate tithes, with the appurtenances, and all rights, customs, profits, dues, and duties, thereunto belonging, did, by indenture dated the twentieth of *November* 1655, demise the same to *D. Wicherley* for ninety-nine years, for three lives, at eleven pounds and sixpence a-year ; that the said *D. Wicherley* became lawfully possessed, and did afterwards, by his deed dated the fourth of *November* 1657, demise the same to the plaintiff for eleven years, who thereby became possessed thereof, and is still intitled to the same, and ought to have received the tithes ; that the defendant *Robert Lush* being possessed of several lands, meadows, and pasture grounds in the said hamlets, denied the payment of the tithes of *grass*, of *herbage*, for *depastruring* of *barren cattle*, and of *hay*, for one year, upon meadows called *Moor Croft*, *Broad Mead*, *Great Oddy Crofts*, and *Little Oddy Crofts*, and the tithe of *wheat* upon a field called *Combeys*, and a close called *Ox Marsh Close* : and also of the tithes of *barley*, *oats*, *pease*, *wool*, and *lamb*, of and from other lands, for five years past, and detained the said tithes

The impropriator of the hamlets of *Itchenwell* and *Sydmontayne* files his bill against the vicar of *Kingscleere* and the occupier of *Sydmontayne Farm* for tithes (a).

(a) See the case of *Webb v. Arnold*, 8th June 1676, 28 Car. 2. post. *Powlett v. Bates*, 9th June 1774, 14 Geo. 3. *Toll v. Pierce*, 22d Feb. 1781, Hilary, 31 Geo. 3.

from

KENT
against
WEBB

from him, and divers other tithes, customs, and rates; and therefore he prayed a discovery and payment of the same.

AND OTHERS.

The occupier of
the farm pleads
ancient *demesne*,
and a customary
manner of tith-
ing.

The defendant *Lusby* answered, and said, that he knew not of the plaintiff's title to the said tithes; and conceived the said meadows and pastures as aforesaid were not liable to the payment of tithes *in kind*; that the lands whereon the sheep were depastured and the lambs fallen and bred, are part of a farm in *Sydmontayne*, called *Sydmontayne Farm*, otherwise the *Demesne Lands of Sydmontayne*; and that, time out of mind, there had been a custom or manner of tithing, that the owner and occupiers of the appropriate tithes of *Itchenwell* and *Sydmontayne*, and all those under whom the plaintiff claims, every year successively have had, cut, and taken to their proper use, at their free election, one acre of wheat and one of barley, standing upon the ground and ready for harvest, the acres to be measured by the court measure, viz. each acre to contain one hundred and thirty-two poles, and no more, of the corn and grain of the owners and farmers of the farm, called *Sydmontayne Farm*; and all those under whose estate the defendant claimed, out, of, and from the aforesaid parcels of land called *Combe's Field*, *Home Field*, and *Pounds Down Field*; and in one other parcel of land in *Sydmontayne*, also parcel of the said farm called *Parke Field*, or in some or one of them, the said acre of wheat to be taken altogether, and standing in one place entirely by itself, and in like manner the acre of barley; in full discharge of all manner of tithes increasing, &c. upon the said farm, and the parcels of land, meadow and pasture, before mentioned; but he denied, that in the said years he did detain any tithes, other than the tithes of the said farm and lands which he holds by lease.

The vicar denies
the custom, and
claims the tithes
of *lamb* and
wool under the
endowment.

The defendant *Webb* answered, and said, that he knew not of the plaintiff's title to the lands in question; and denied that those tithes and customs in the said hamlets ought to be paid to the plaintiff, for that they are tithings in the parish of *King'scleere*, whereof he is and hath been vicar twelve years, and ought to have the tithes belonging to the vicar of *King'scleere*, and which hath been paid to him, except the manor tithes.

The plaintiff replied; and witnesses were examined on both sides.

Upon hearing counsel on both sides, and reading the depositions of several witnesses; and also an ancient endowment of the said vicarage;

But the usage
being to the
contrary, the
Court decreed
the tithe of *lamb*
and *wool* to the
plaintiff.

THE COURT declared, that although the said vicarage was endowed, yet the said endowment doth not warrant the claim and pretence of the said vicar; and that he cannot ground his claim to all the tithes of *lamb* and *wool* upon the said endowment; and that the usage had gone contrary to his claim, and had prevailed against it. AND THEREFORE ORDERED, that the tithe of *wool*

wool and lamb shall be paid to the plaintiff, saving the right of the vicar, if he hath any, for the future, but without costs.

KENT
against
WEBB

And for that some lands had been taken away from the *demefne lands*, and some added by way of exchange, AND OTHERS.

IT IS ORDERED BY THE COURT, that a commission shall be awarded to ascertain what were the *ancient demefne* lands alledged to be within the *modus*; what hath been taken out; and what added to them by way of exchange; and, whether the lands so exchanged are of equal value? And if they shall be found to be of equal value (if the parties will consent), the same are to be decreed upon the return of the said commission to be within the *modus* pretended by the defendants by their answers; and also to enquire of and set out such lands as were formerly part of other lands which were not *demefne lands* within the said *modus*, and are now taken into the *demefne lands*, and where they lie, and are bounded, and what lands are not exchanged (if any such there are).

And order a
commission to
ascertain, whe-
ther the lands
were *ancient de-
mesne*.

And as to those,

THE COURT is of opinion that tithes are due in kind.

The commission was accordingly awarded, executed, and returned; and now upon reading the decree and commission, and hearing of counsel, and reading the depositions taken by virtue of the commission, and long debate, forasmuch as the same is proper for a *trial at law*,

28th Jan 1668.
A trial at law
directed.

THE COURT ordered, that an action be brought, and the questions to be stood upon at the said trial to be,

FIRST, Whether there be a *modus* for *Sydmontayne Farm*, and what that *modus* is? and, whether that *modus* hath been answered to the plaintiff for the time he hath been farmer? and if not, how much the plaintiff hath been damnified thereby?

SECONDLY, Whether *Broad Mead, More Croft, New Mead, and Cow Field*, otherwise called *Cow Marsh*, now occupied with or as part of *Sydmontayne Farm*, are to pay tithes in kind?

THIRDLY, Whether there was any agreement that tithes in kind of the seventeen acres formerly parcel of *Sydmontayne Farm*, and since exchanged from the farm, were, by that agreement, to go in satisfaction of the tithes only of the like quantity of seventeen acres exchanged, or in lieu and discharge of all the tithes in kind of the exchanged lands, being thirty-nine acres?

FOURTHLY, What other lands the defendant *Robert Lush* holds within the said farm called *Sydmontayne Farm* that are to pay tithe in kind, as not being within the *modus* or within the agreement (if any agreement), upon the exchange? and, whether the agreement was made to be perpetual, or only for some limited time?

KENT
against
WEBB
AND OTHERS.

22d June 1674.
The points
found by the
jury.

FIFTHLY, The defendant at the said trial is to confess the plowing of one acre of *New Down*, in order to bring it in trial, whether *New Down* ought to pay tithes in kind, or not ?

A trial was accordingly had ; and the jury have found, as to

THE FIRST ISSUE, That there is a *modus* for the tenants of the farm of *Sydmontayne* to pay to the proprietor of the tithes of the farm one acre of wheat and one acre of barley, in full satisfaction of all tithes of corn and hay ; and that the proprietors of the tithes have used and ought to accept the same, in full satisfaction of the tithes of the said farm.

THE SECOND ISSUE, That the tenants and occupiers of *Broad Mead*, *More Croft*, *New Mead*, and *Cow Field*, otherwise called *Cow Marsh*, have used to pay, and ought to pay, to the proprietor of the tithes aforesaid for the time being, the tithes of all corn and hay thereon yearly growing, and other tithes in their proper kinds.

THE THIRD ISSUE, That there was not any agreement made between the plaintiff and *Sir William Kingsmell*, deceased, that the tithes of the seventeen acres of land formerly parcel of *Sydmontayne Farm*, and lately exchanged with the tenants of lands lying in the common fields of *Sydmontayne* for thirty-nine acres of land lying in the same common fields, neither were they paid to the plaintiff in lieu and satisfaction of the tithes of the thirty-nine acres.

THE FOURTH ISSUE, That the plaintiff is damnified fifteen pounds by the defendants not paying the *modus* in lieu of the tithes of *Sydmontayne Farm* for three years.

THE FIFTH ISSUE, That the tithes of grain and hay arising out of one hundred acres of land and sixty acres of meadow in *New Down*, held by *Robert Lush*, with *Sydmontayne Farm*, have time out of mind been used to be paid, and ought to be paid yearly to the proprietor of the tithes in their proper kinds.

The cause now came on to be further heard ; and upon reading the order of the twenty-eighth of *January*, and the verdict,

The tithes decreed according to the verdict.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff his tithes according to the verdict ; and that the auditor of the county of *Hants* shall compute the monies due to the plaintiff for the *modus* payable in lieu of tithe of the lands of *Sydmontayne Farm*, lying within the *modus*, according to the verdict, for the time therein mentioned, and according to that rate for all the time since to this time. And as to the tithes issuing out of the lands out of which, by the said verdict, it is found, that the plaintiff ought to have tithes in kind, viz. *Broad Mead*, *More Croft*, *New Mead*, and *Cow Field*, otherwise called *Cow Marsh*,

Marfb, and the thirty-nine acres lying in *Coombe-field*, *Claythorn*, *Little South Field*, *Broad Leaver*, the *Six Acre Piece*, and all the tithes of *New Down*, the auditor shall compute the value of the tithes of the said several grounds for the several years mentioned in the bill to this time, according to the proofs to be produced before him, and report the same to the court.

KENT
against
WEBB
AND OTHERS.

In pursuance of the said order, the auditor returned his certificate.

The cause now coming on to be heard on the said certificate, 7th Dec. 1674. exceptions were taken thereto; and upon hearing counsel on both sides,

THE COURT ordered, that the defendant *Robert Lush* shall forthwith pay to the plaintiff seventy-five pounds, seven shillings, and sixpence for the value of the tithes due from him to the plaintiff, according to the certificate of the auditor.

EDW. TURNOR.

TIM. LITTLETON.

EDW. THURLAND.

BASIRE, D. D. and BLACKETT *against* WHARTON and Others. MICH. TERM,
19. CAR. 2.

Durham, 24th October 1667.

THE plaintiff *Basire*, as rector of the parish-church of *Stanhope*, in *Weardale*, in the county of *Durham*, and the plaintiff *Blackett*, as his lessee, exhibited a bill to be relieved for tithe of lead ore (a) in the said parish. A bill by a rector and his lessee for the tithe of lead ore.

The cause came on to be heard in *Trinity Term* last; and upon long debate, forasmuch as the defendants had denied the custom laid in the bill, but the defendant *Wharton* had alledged that six of the lead mines paid tithes to the rector or his farmer, without deducting the charges for digging, winning, and getting the same, either when the same was ready for the mill, or at the quarterly meetings. The defendant confesses that six of the mines pay tithe.

THE COURT then ordered, that the defendants and the other persons who respectively held the said six groves under the defendant *Wharton* should pay to the plaintiff according to their respective interests the tithes of the lead ore digged and gotten in the same. The respective owners decreed to pay tithes for the six mines;

But as to all the rest of the mines named in the answers, or which were in the said rectory, or the precincts or titheable places thereof, IT WAS THEN ORDERED, that it should be referred to a trial at law upon the following issues, that is to say, and as to the other mines in the parish, issues are directed to try the custom.

(a) See the case of *Tullie v. Halfall and Others*, ante.

BASIRE AND
BLACKETT
against
WHARTON
AND OTHERS.

FIRST, Whether there be a custom within the parish of *Stanhope*, in *Wearsdale*, in the said county, to pay to the parson or rector there for the time being tithes in kind of *lead ore* gotten within or out of the lead mines (other than the six mines) within the said rectory, or any of them, and which of them, and which not : and that if there was such a custom there, then,

SECONDLY, Whether the said custom was to pay the said tithes of lead ore clean and washed, without deduction of all manner of charges (except the labour of those who were owners of any lead mine or mines), for digging, winning, and getting the said ore, or without deduction of all manner of charges for digging, winning, or getting the said ore (the owner's labour of any lead mine or mines excepted).

A verdict for
the rector on
both issues.

According to which order the plaintiff's declared ; to which the defendant *Wharton* (all the other defendants being workmen for days wages and servants to him) pleaded ; and, upon the trial, and full evidence, a verdict passed for the plaintiff *Basire* upon both the issues.

The cause now came on upon the equity reserved ; and upon reading the said order and verdict, the plaintiff's counsel prayed a decree.

And forasmuch as the defendant *Wharton* (being present in court) and his counsel being satisfied with the plaintiff's right to the tithes in question,

The tithe of the
ore, when clean-
ed and washed,
and without any
deduction for
the digging,
winning, and
getting it, de-
creed.

IT IS ORDERED BY THE COURT, that the several and respective owners and occupiers of the several lead mines mentioned in the answers, except of the mines called *Grove Rake*, *Thorn Grove*, *Peakside*, *Ewtree*, *Nicholson's Grove*, and *Harnasbarrow*, otherwise *Harnisbarrow*, formerly decreed to the plaintiff, shall pay to the plaintiff, according to their respective interests, the arrears of the tithe of lead ore digged, winned, and gotten in the said lead mines, or any of them, for the first of the three years mentioned in the bill, clean and washed, without deduction of any manner of charges for digging, winning, and getting the said ore. The plaintiffs are to take out a commission to set out the quantities and values of the said tithes in question, and to have their costs both at law and in equity.

HALE, Chief Baron.
TURNOR, Baron.
LITTLETON, Baron.
THURLAND, Baron.

HORDE

HORDE and Others *against* WANLEY.MICH. TERM,
19. CAR. 2.*Gloucestershire, 18th November 1667.*

THE bill stated, that the plaintiffs, for one year, were seised in fee of the manor of *Bourton on the Water*, and of and in a certain portion of tithes, of all sorts, yearly arising, &c. of, in, upon, and out of all the lands and grounds situate and being within the parish of *Bourton on the Water*, and the limits, bounds, and territories thereof; that the former owners and occupiers of the said manor and portion of tithes. whose estates the plaintiffs now have, for time beyond memory, have had *two third parts* of the tithes of hay yearly coming, &c. of, in, upon, and out of all the plot or parcel of meadow ground called *the Tithing Mead*, containing about eight acres, and being in a meadow called *Stapleton Mead*; which said *Tithing Mead* hath been sometime belonging to or used with a certain farm or lands of the defendant's in *Eyford*, but lieth within the parish of *Bourton on the Water*, and is rated for taxes, repairs of the church, and relief of the poor, in *Bourton*, and is marked and stoned out with ancient meere-stones, to distinguish and make manifest how much and what part thereof is not titheable; and that part which is titheable is called *Tithing Mead*; and hath been held and enjoyed with the said farm of *Eyford*. The plaintiffs therefore prayed, that the defendant might set forth the quantity and value of, the hay which they had made upon *Tithing Mead* for the said year, and account for the same.

The plaintiffs demand *two third parts* of the tithe of hay of the *Tithing Mead*, in the parish of *Bourton*, in *Gloucestershire*.

The place where described.

The defendant denied that he had in his possession or occupation any meadow known by the name of *the Tithing Mead*; but said, that he had found in his ancient writings mention made of two meadows which he holds, and which he believes are the meadows which the plaintiffs mean by *Stapleton Mead* and *Tithing Mead*; but that the same are called *Standell*, otherwise *Staple Meadow*, and *Steward's Meadow*, both together containing eleven acres; that the said meadow which the plaintiffs call *Tithing Mead*, and which defendant believes is called *Steward's Meadow*, is but the third part of the said eleven acres; that he knows nothing of any meere-stone being in either of those meadows, to distinguish what is titheable and what is not; that he is owner and possessor of the meadows called *Standell*, otherwise *Staple Meadows*, and *Steward's Meadow*, and of several other parcels of meadow ground situate in the said parish; but that he knows not that any tithes were ever paid to the owners of the manor of *Bourton*, or to the parson or vicar of the said parish for any of those meadows;

The defendant denied possession of any place called *Tithing Mead*; but describes another mead as the place intended;

HORDE
AND OTHERS
against
WANLEY.

that the said meadows, with others, were heretofore parcel of the demesnes of the dissolved monastery of *Evesham*, in the city of *Worcester*, and, at the time of the dissolution of that monastery, were in the actual possession of the abbot or prior ; that the said abbot and prior, at the time of the said dissolution, held and enjoyed the same, discharged of the payment of any tithes ; that by virtue of the act of the thirty-first year of *Henry Evesham*, and the *Eighth*, the same meadows came to the said king, who granted the same to *Sir Philip Hobby* and his heirs, discharged of tithes, from whom the same came afterwards to the *Earl of Worcester*, of whom the defendant purchased the same ; and that he knew not how much hay was cut or made upon the mead in question in the said year.

But on it being proved, by reading the lease and other records from the augmentation office, that the said portion of tithes was thus let, The plaintiffs replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel, and reading the depositions, and a lease made by the late abbot of *Evesham* to *J. Lane* and others, dated the seventeenth day of *April*, in the thirtieth year of KING HENRY THE EIGHTH, whereby it appeared, that the said portion of tithes in *Bourton* was in lease at the time of the dissolution of the said abbey ; and upon reading the copies of several other records remaining in the augmentation office ; and upon much debate ;

the Court decreed the tithes of *Tithing Mead* to the plaintiffs. IT IS ORDERED BY THE COURT, that the said defendant do forthwith pay to the plaintiffs thirteen shillings and fourpence, proved by the depositions to be the value of the tithes arising within the said *Tithing Mead* in the said year.

ATKINS, Baron.

TURNOR, Baron.

RAYNSFORD, Baron,

MICH. TERM,
19. CAR. 2.

TABOR, Clerk, against BARKER.

Essex, 18th November 1667.

The vicar of *Easterford*, in *Essex*, claims 3s. a year for every saddle-horse depastured in the parish ; 10d. a year for *Easter* offerings ; and the small tithe of cherries and coriander seed. THE plaintiff, as vicar of the parish-church of *Easterford Kelbeden*, stated, by his bill, that to the said vicarage all small tithes, oblations, and other profits, do belong ; that he hath been vicar there ever since *August* 1660, and performed the cure there ; and that in regard thereof he ought to receive all small tithes, oblations, and other profits arising therein ; that by an ancient custom and agreement the annual sum of three shillings hath yearly been paid to the plaintiff's predecessors for the herbage of every pack-horse and saddle-horse fed within the parish, and ought to have been paid to the plaintiff ; that the defendant had depastured within the parish two pack and saddle horses for three years, and ought to have paid the plaintiff eighteen shillings ; that he also ought to have paid, for himself and family, tenpence for *Easter* offerings by the year ; that he also sold quantities

tities of cherries growing in the orchards ; and sold coriander seed ; but that he refused to pay the said eighteen shillings for the pack and saddle horses, and the said Easter offerings, or to discover the quantity of the cherries and coriander seed, pretending that there is no such custom, nor any such tithes due. He therefore prayed a discovery and satisfaction for the same.

TABOR
against
BARKER.

The defendant answered, and said that the plaintiff was vicar, and had officiated there ; and that the small tithes and other duties were due to him ; that he is an inhabitant in the said parish, and had lived there three years, and used the trade of a *chandler*, and had kept one horse, sometimes for the saddle and sometimes for the pack, which he had used for carrying his wares belonging to the trade, which had been kept during some time at pasture in other parishes, except for two months, one month thereof the said horse was kept and depastured in the grounds of the plaintiff, for which he did give him satisfaction ; that no tithe is due for the herbage of any horse which the owner doth use about his trade ; and he denied, that, by any custom or agreement whatsoever, there hath or ought to have been paid yearly to the plaintiff, or his predecessors, the sum of three shillings yearly, or any sum whatsoever, for the tithes of the herbage of any saddle or pack-horse. He also denied that he ought to pay for himself and family, for Easter offering, tennepence, or any other sum, except twopence for every person in his family being above the age of sixteen ; and that, for the three years last past, he had paid for himself and wife to the said plaintiff sixpence, having no more in family. He also denied the rest of the bill.

The defendant
admits the facts,
but denies the
custom.

The plaintiff replied ; and witnesses were examined on both sides ; and upon reading the depositions of several witnesses ; FOR THAT the plaintiff hath remedy in the *ecclesiastical court* for the non-payment of his tithes for the cherries and coriander seed, if the same be made appear to be due to him.

The Court decides the tithe for depasturing the saddle-horse, and leaves the vicar to recover his small tithes in the spiritual court.

THE COURT did not think fit to give the plaintiff any relief therein ; but being willing to relieve the plaintiff for the tithe of the herbage for saddle and pack horses, IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff six shillings for the herbage of his horse for two years, with forty shillings costs of suit.

EDW. ATKINS.
CHR. TURNOR.
RIC. RAINSFORD.

MICH. TERM,
19. CAR. 2.

HODGSON *against* WILSHAW.

Staffordshire, 18th November 1667.

The lessee of the royal chapel at *Windsor*, and of the rectory of *Uttoxeter*, claims tithes of the parish of *Uttoxeter*.

THE bill stated, that the plaintiff, by a lease for years from the dean and canons of the king's free chapel in *Windsor*, was and yet is farmer of the scite of the rectory and parsonage of *Uttoxeter*, in the county of *Stafford*, and thereby intitled to tithes of all corn, grain, hay, wool, lambs, herbage, and other tithes and profits arising, &c. within the said parish and the titheable places thereof; that the defendant, for three years, was occupier of divers acres of land sown with wheat, oats, and other grain, and had several acres of meadow, which he mowed and made into hay; and had also kept sheep, bullocks, dry cattle, and lambs, from which he had wool; the tithes of all which were yearly of great value; and that the defendant refused to pay the same, or make any satisfaction.

The defendant pleads, that the place where was parcel of the monastery of *Croxton*, and of the *Cistercian order*, and so discharged of tithes.

The defendant answered, and said, that he knew not of the plaintiff's title; that he had lands lying in the said parish; and that the abbot of *Croxton*, near *Cheadle*, was heretofore seised thereof in right of his monastery of *Croxton*, being of the *Cistercian order*, and acquitted from the payment of tithes; which rectory afterwards came to the crown, and was afterwards granted to *John Pope* and his heirs, who held the same discharged of tithes; and that the said estate came from the said *John Pope* to the defendant.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel, and much debate,

An action on the 2. & 3. Edw. 6. c. 13. directed, to try the fact.

THE COURT ordered a *trial at law* upon an action on the statute of 2. Edw. 6. c. 13. for not setting forth of tithes; and that the equity be reserved until after the trial.

But by records afterwards found in the augmentation office, it appeared, that *Croxton* was one of the lesser abbeys;

Subsequent to the above hearing and decree, the plaintiff had found out several records in the augmentation office which manifested that the abbey of *Croxton* was one of the lesser abbeys; so that the defendant's lands lying within the same were not discharged of tithes.

Whereupon the said cause was re-heard, pursuant to an order dated the twentieth of *January* last, and the records produced in court.

19th Feb. 1667. and therefore the tithes were decreed.

And THE COURT being satisfied that the said abbey of *Croxton* was one of the lesser abbeys, ordered, that the said tithes shall be decreed for the plaintiff, unless the defendant shall shew good cause to the contrary; and the cause to stand over.

JAMES,

JAMES, Clerk, *against* MYLES and ALFORD.HILARY TERM
19. CAR. 2.*Somersetshire, 10th February 1667.*

THE point in issue between the parties was agreed to be An issue directed to try a *modus*, and a verdict found for the defendant.
a modus decimandi within the parish of *Crocombe*, whereof the plaintiff is parson or rector; and in particular whether, by ancient custom within the said parish, the occupiers of all ancient meadow grounds within the same parish which live out of the said parish, are and ought to pay one penny in a shilling of the rent of all such meadow ground when let at any improved yearly rent, or fourpence a-year for every one of the said ancient meadow grounds, to the parson or rector of the said parish for the time being, for and in lieu of the tithes thereof.

IT IS ORDERED BY THE COURT, that the same be referred to a trial at law, the plaintiff in equity to be plaintiff at law against the defendant *Alford*; and the issue to be, whether, by all the time whereof the memory of man is not to the contrary, there hath been a custom within the said parish, that the occupiers of all ancient meadow ground within the same parish are and ought to pay yearly, in lieu and satisfaction of all tithes issuing or payable to the rector or parson of the said parish of *Crocombe* aforesaid for the time being, out of, for, or in respect of the said meadow ground, fourpence only for every acre thereof for one year, and according to the proportion for a greater or lesser quantity of such meadow ground; and at the said trial, both parties are to admit all circumstances, and to insist only upon the said issue. And it is further ordered, by consent, that the said other defendants shall be bound by the success of the said trial.

An action was accordingly brought; and a trial thereupon had; and a verdict given for the defendant.

IT IS ORDERED BY THE COURT, that the said defendants shall 1st June 1668. be, and they are hereby dismissed this court of and from the said bill, and the matters therein contained, without prejudice, &c.

GAWDEN *against* GILBERT.EASTER TERM
20. CAR. 2.*Caermarthenshire, 28th April 1668.*

THE plaintiff, by his bill, prayed to be relieved, as farmer and possessor of the impropriate rectory of *Langborne*, in the county of *Caermarthen*, for tithes of several acres of land in *Westmarsh*, within the said parish, for four years. The lands called *Westmarsh* in the county of *Caermarthen*, lie within the parish of *Langborne*, and were overflowed by *Westmarsh* the sea.

The defendant answered, and alledged, that he knew not that all the lands called *Westmarsh* did lie within the said parish; that

GAWDEN
against
GILBERT.

Westmarsh hath, for all the time whereof the memory of man is not to the contrary, until the years aforesaid, been subject to be drowned by the overflowing of the sea, and for all that time hath been unprofitable ground; and that by the statute of 3. *Edw.* 6. c. 13. it ought to be free from paying of tithes for seven years.

Upon hearing counsel for both parties, and on full debate, a trial at law was directed upon two issues.

FIRST, Whether the lands in the possession of the defendant in *Westmarsh* during the said years do lie within the said parish of *Langborne*? or, how much thereof lieth within the said parish?

SECONDLY, Whether the said lands, during the years aforesaid, were naturally barren grounds, and are comprehended within the said statute, or not?

Upon the first issue, the jury found one hundred and fifty acres, parcel of *Westmarsh*, to lie within the said parish of *Langborne*.

But not being
originally barren
lands.

And upon the second issue, the jury found that the said one hundred and fifty acres were not naturally barren within the said statute of *Edward the Sixth*; and so gave a verdict in both the issues for the plaintiff.

Upon reading the said order, and the said verdict, and an affidavit; and upon debate; and for that the defendant *Anne Gilbert* had confessed in her answer that she had in her hands assets sufficient of the said *W. Gilbert* to pay the plaintiff;

26th Oct. 1668.
They shall pay
tithe to the rec-
tor of *Langborne*.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff the value of the tithes in question, unless cause be shewn to the contrary.

And in the mean time, the auditor is to compute the values of the said tithes, according to the lowest values proved by the plaintiff's witnesses, or at a medium between the proofs of the plaintiff and the defendant.

26th Nov. 1668.

The auditor returned his certificate; and upon reading the same,

IT IS ORDERED BY THE COURT, that the same be confirmed, and that the defendant do pay to the plaintiff forty-five pounds, being the value of the tithes in question, accordingly.

BISHOP

BISHOP OF OXON *against* OVERBURY, Knt.TRIN. TERM,
20. CAR. 2.*Oxfordshire, 4th June 1668.*

THE bill was, to be relieved touching tithes in *Chibney*, within the vicarage of *Cuddefden*, in *Oxfordshire*, and to have the same decreed to the plaintiff in kind, according to the true value thereof, and to have the former proceedings and proofs revived in a cause *the Bishop of Oxford v. Dooley*.

The vicar of *Cuddefden* is only intitled to a rate tithe of 6l. 13s. 4d. in lieu of all tithes due in the parish of *Chibney*.

The question was, Whether the plaintiff should have tithes in kind in *Chibury*, or only a rate tithe of six pounds, thirteen shillings, and fourpence, in lieu of all tithes due to the plaintiff, as vicar and commendatory of *Cuddefden*.

A trial at law at the bar of this Court was ordered; the defendant *Wickam* to be the defendant in the action, and to take upon him the tenury of the whole in *Chibney* aforesaid; to be tried by a jury of the said county of *Oxford*; and the equity to be reserved till after the trial.

On the tenth day of the said *June* it was ordered, that all the defendants to the said bill should be made defendants in the said action at law; and the plaintiff, as to payment of costs, did waive his privilege by consent; and all other things ordered by the said order of the fourth of *June*.

The action was tried at the bar of the court, and a verdict given for the defendants; and therefore

IT IS ORDERED BY THE COURT, that the said defendants shall be absolutely dismissed this court of and from the said bill, and the matters and things therein contained, with moderate costs from the time of reviving the said cause, discounting out of the same the arrears of the said rate of six pounds, thirteen shillings, and fourpence, due to the said plaintiff.

MATTHEW HALE.

DEAN AND CHAPTER OF WELLS *against* THURLE, Clerk.TRIN. TERM,
20. CAR. 2.*Somersetshire, 16th June 1668.*

THE bill stated, that there hath been anciently due and payable to the plaintiff's predecessors, and still is due to them, one or more pension or pensions, rent, or annual sum of thirty-four pounds and one penny, issuing out of the vicarage of *Saint Cuthbert's*, in *Wells*, which was constantly heretofore, till the late wars, paid to the plaintiff's predecessors, out of which twenty pounds thereof is yearly paid to the use of the choristers of the said cathedral church. But that the defendant, the vicar thereof, now refuses to pay the thirty-four pounds and one penny.

An endowment, or grant, the copy of an exemplification of a judgment, and an ancient account, read in evidence on a bill against the vicar of *Saint Cuthbert's* for the payment of a pension.

The

DEAN AND
CHAPTER OF
WELLS.
against
THURLE.

The defendant answered, and confessed, that he was inducted into the said vicarage in *September 1662*.

The plaintiffs replied; and witnesses were examined; and upon hearing counsel, and reading several depositions, and an *endowment* made to the plaintiff's predecessors in 1357 of thirteen pounds, six shillings, and eightpence, in consideration of the tithes due from the vicar of *Saint Cuthbert's*; and of a grant made by *Richard Harewell*, vicar of *Saint Cuthbert's*, in the twelfth year of *Henry the Sixth*, to the then dean and chapter, of twenty pounds *per annum*; and reading a copy of an *exemplification* of a judgment, of the fourteenth year of *Henry the Sixth*, obtained in the common pleas against *J. Screen*, vicar of *Saint Cuthbert's*, for ten pounds, parcel of the said yearly rent or pension of twenty pounds, in which said judgment the said deed or grant is recited; and upon reading several *ancient accounts*, wherein the said several pensions or annual rents of thirty-four pounds and one penny appears to be received by the plaintiff's predecessors from the vicar of *Saint Cuthbert's*, until the beginning of the late wars, during which wars the plaintiffs had lost their deeds and evidences whereby the same were granted,

IT IS ORDERED BY THE COURT, that the said defendant do pay the arrears of the said pension, rent, or usual sum of thirty-four pounds and one penny, amounting to one hundred and eighty-seven pounds and fivepence halfpenny, in full satisfaction, due at *Lady Day* last.

MICH. TERM,
20. CAR. 2.

ROUSE, Clerk, against BARRY.

Devonshire, 26th November 1668.

The vicar of
North Petherwyn
sues for tithe
hay and small
tithes.

THE plaintiff, as vicar of the parish-church of *North Petherwyn*, in the county of *Devon*, exhibited a bill in this court to be relieved for the tithes of hay, milk of cows, ewes, barren cows, colts, gardens, poultry, and offerings.

The defendants
deny his right to
tithe hay, and
state a *modus* as
to the small
tithes.

The defendant denied that the tithe hay belonged to the vicar of the said parish; and set forth a *modus decimandi* of the other titheable matters above-mentioned, viz. for every communicant, twopence, but the youngest child only one halfpenny; for every milch cow, twopence; for every weere or barren cow, one penny; every colt foal, one penny; every garden, twopence; every milch ewe, a farthing; and eggs at or about *Easter*, in lieu of all poultry (a).

Issue directed to
try his right to
the tithe hay,
and the validity
of the *modus*.

A trial at law was ordered upon two issues.

FIRST, Whether tithe hay belongs to the vicar of the said parish-church of *North Petherwyn*?

(a) See the case of *Hele v. Proate*, ante, page 45.

SECONDLY,

SECONDLY, Whether the tithes of other the titheable matters above-mentioned be payable to the vicar of the said parish in kind, or according ?

Rouse
against
BARRY.

A trial was had ; and a verdict given for the defendant.

Verdict for the defendant.

But the plaintiff's counsel prayed *a new trial*, alledging he had lately found out new evidence of an ancient record of endowment in the bishop's court of *Exeter*, whereby it appeared, that the said vicarage of *North Petherwyn* was endowed with all tithes whatsoever (only *corn* excepted) ; and also desiring, that the *tithing book* in the defendant's custody might be shewn to the plaintiff.

A new trial prayed, on the ground of new evidence since discovered.

The defendant's counsel informed the Court, that a verdict on both issues had passed for the defendants ; and the same being produced, he prayed that the said bill might be dismissed.

THE COURT ordered, that the plaintiff producing a true copy of the endowment upon oath may be further heard ; and that in the mean time the plaintiff or his agent may have liberty to peruse the tithing book ; and in case he doth not shew good cause for *a new trial*, that then the said bill and the said defendants shall be absolutely dismissed this Court. And no cause being shewn, the said order was made absolute.

A new trial granted, on condition of producing a copy of the deed.

MATTHEW HALE.
CH. TURNOR.

FLEETWOOD *against* LIVESAY.

HILARY TERM
20. CAR. 2.

Lancashire, 11th February 1668.

THE bill stated, that the plaintiff then was, and for thirty years past had been, impropriator of the rectory of *Blackborne*, in *Lancashire*, and became entitled to all tithes of corn, grain, and hay, and to all small and privy tithes, and all rates, compositions, or sums of money, in lieu of tithes, happening, &c. within the said rectory and the titheable places thereof ; that the defendants had severally occupied and possessed, for several years, arable lands, meadow, and pasture, and had growing thereon corn, grain, and hay, in the said years, of great value ; and also had milch cows, sheep, dry cattle, calves, lambs, pigs, poultry, eggs, wool, milk, and several other small tithes, of considerable value ; and that the said tithes, for all the same time, had been and still was due ; but that they refused to pay their tithes in kind, pretending they were not due, but some rate in money. He therefore prayed a discovery, and to be relieved in the premises.

The impropriator of the rectory of *Blackborne* sues for great and small tithes in the township of *Balderston*.

FLEETWOOD
against
LIVESAY.

The defendants
plead a *modus* of
3l. 13s. 4d. year-
ly, in lieu of the
tithes of corn
and hay, and
for all other
titheable articles
a composition,
as stated in a
book called *the*
Easter roll ;

The defendants answered, and said, they knew not that the plaintiff was impropriator ; but believed, that she was farmer of the said rectory for the time aforesaid ; and that by reason of her being farmer, she had for divers years received all manner of tithes and rates of tithes of all things that have been usually tithed or accustomed to be tithed ; but they denied that the plaintiff either had or ought to have received any tithe of corn, grain, wood, and hay, or any other tithes whatsoever in kind, arising in the township of *Balderston*, in the said parish ; FOR THAT tithes in kind were never paid within the said township, but that there had been, time out of mind used, a certain custom or *modus decimandi*, viz. that all the inhabitants owners and occupiers of lands within the said township of *Balderston* have, time out of mind, paid and used to pay to the rectors and impropriators of the said rectory, or to their farmer, an ancient customable or prescriptive yearly rent of three pounds, thirteen shillings, and fourpence, in lieu of all manner of tithes of corn and hay in the said township of *Balderston* ; and that for all other tithes whatsoever happening in the said township, the several rates and compositions or sums of money which are mentioned and contained in a certain book or roll called *the Easter roll*, were payable in lieu of their several and respective tithes therein mentioned.

and confess their
residence and
occupation, of
lands within the
township ;

And all the defendants confessed, that they had for several years occupied and enjoyed lands therein within the said township, and had therefrom several quantities of grain and hay, but could not set forth their quantities, they not being to pay their tithes in kind, but the said rate of three pounds, thirteen shillings, and fourpence ; and said, they had kept several milch cows and dry cattle, and had several other small tithes, but took no notice of them, in regard they are comprehended in customable rates mentioned in the *Easter book*.

and aver the
payment ac-
cording to the
modus and the
Easter roll.

And all the defendants, except *Burly*, said, that they had duly, upon demand, paid, to the filing of the bill, all the payments and rates for tithes aforesaid, and the accustomed rent of three pounds, thirteen shillings, and fourpence, until a few years past, when the same was refused ; since which time the defendant and the rest of the inhabitants of *Balderston* have yearly, on the eighth of *September*, being the accustomed day for payment of the said rents, lawfully tendered the said prescriptive and ancient rent in the church-porch of *Blackborne*, and had been ready to pay the same, the receipt of which was refused.

And the defendant *Burly* confessed, that for five years he had neglected to pay the rates in *the Easter roll*, but was ready to pay them, if the plaintiff would accept the same.

Issues directed.

The plaintiff replied ; and issue was joined ; and witnesses were examined on both sides ; and upon opening the bill and answer, and upon some debate, it is ordered by THE COURT, that a trial at law shall be had upon these issues :

FIRST,

FIRST, Whether or no the inhabitants possessors and occupiers of lands within the said township of *Balderstone*, in the parish of *Blackborne* aforesaid, time out of mind, have paid and used to pay to the rectors and impropriators of the said parish of *Blackborne*, or to the farmer or farmers of the said rectory for the time being, a certain ancient customable prescriptive yearly rent of three pounds, thirteen shillings, and fourpence, for and in lieu of all tithes of *corn* and *hay* growing, arising, and renewing within the said township of *Balderston*, in the said parish?

FLEETWOOD
against
LIVESAY.
First issue, to
try the *modus*
for corn and hay.

SECONDLY, Whether or no, within the said township of *Balderston*, there is, and time out of mind hath been, a certain custom or *modus decimandi*, namely, that all the inhabitants owners and occupiers of lands within the said township of *Balderston*, time out of mind have paid and used to pay to the rectors and impropriators of the said rectory, or to the farmer or farmers of the said rectory for the time being, the several rates, compositions, or sums of money mentioned or contained in a certain book or roll called *the Easter roll*, in lieu of and for all manner of small and minute tithes whatsoever, arising, happening, increasing, and renewing within the said township of *Balderston*, in the said parish of *Blackborne*?

Second issue, to
try the compo-
sition rates, as
stated in the
Easter roll.

Unto which action the said defendant *Livesay* is to confess having detained tithes to the value of five pounds in his own hands. The equity of the cause to be reserved until after the said trial; and both parties to give copies of their exhibits.

The defendants not trying the said issues, the cause came on again this day; and upon hearing counsel on both sides, and reading some part of *the Easter rolls*, and of the depositions taken in the cause, and on full debate; inasmuch as the defendants, having liberty to peruse *the Easter rolls* proved in the cause concerning the issue directed as to the small tithes, had refused to plead to the said action, so that a trial might have been had upon the said issues,

11th Nov. 1669.
The defendants
refuse to join
issue.

IT IS ORDERED BY THE COURT, that the attorneys on each side shall see *the Easter book* or rolls, and extract the rates of such things as are therein mentioned; and what appears to be a *modus* to be answered according to the said *Easter rolls*; and that all such small and privy tithes which are not contained in *the Easter rolls* or books shall be paid in kind; and the plaintiff to have good costs.

The attorney on
each side order-
ed to inspect the
roll, and the
tithes to be paid
accordingly.

AND IT IS FURTHER ORDERED, that as to the tithes of corn and hay a trial shall be had upon the following issue, viz. whether or no all the inhabitants possessors and occupiers of lands within the said township of *Balderston*, in the parish of *Blackborne*, have, time out of mind, paid to rectors and impropriators of the said rectory, or to the farmer or farmers of the said rectory for the time being, a certain ancient accustomable prescriptive yearly rent of three pounds, thirteen shillings, and fourpence, for and in lieu of all tithes

The issue re-
specting the *mo-
dus* for corn and
hay directed to
be tried.

FLEETWOOD
against
LIVESAY.

tithes of corn and hay growing, arising, and renewing within the said township of *Balderston*, in the said parish; and all the defendants are to be concluded thereby; and the equity of the cause, as to the tithes of corn and hay, to be reserved until after the said trial.

And inasmuch as the defendants have not set out the quantities and values of the tithes detained by them from the plaintiff,

It is ordered, by consent, that they shall set forth, upon their oaths in writing before MR. BARON TURNOR, the respective quantities and values of all their tithes, of what kind soever, till this present time.

MATTHEW HALE.
CHR. TURNOR.

20. CAR. 2. WISE *against* THE BISHOP OF WORCESTER and Others.

Oxfordshire, 8th February 1668.

A bill to discover the consideration given for a lease of the rectory of *Hook Norton*, in *Oxfordshire*.

THE bill stated, that *R. King*, abbot of *Thame*, and the convent of the same place, by deed dated the sixth of *April*, in the twenty-ninth year of *Henry the Eighth*, did demise and grant to *John Crocker* all that the farm of *Hook Norton* and the parsonage and rectory of *Hook Norton*, and all lands and tithes thereunto belonging (except as therein is excepted), to hold to him, his executors and assigns, for eighty years, at the yearly rent of nine pounds for the manor and farm, and twenty-two pounds ten shillings for the parsonage, five pounds for the sheep common, hay, and custom works of *Brown Mead* and *Small Mead*, eighteen pounds for the wool, six pounds, thirteen shillings, and fourpence for *Prestfield*, six pounds, thirteen shillings, and one penny for the vicarage, payable at *Michaelmas* and *Lady Day* equally; that the said abbot, being afterwards *Bishop of Oxford*, and seised of the reversion of the said manor and premises, did, by indenture dated the eighth of *October*, in the first year of *Edward the Sixth*, demise to the said *J. Crocker* the said manor (except as is therein excepted) for nine years, at the yearly rent of eleven pounds, four shillings, and ninepence; that the bishop being seised of the reversion of the premises in right of his church, by indenture dated the fourteenth of *October*, in the first year of *Queen Mary*, did demise the premises to the said *J. Crocker*, his executors, administrators, and assigns, for ninety years after the expiration of the term granted, and therein specified; that *J. Crocker* became possessed as aforesaid, and about the eleventh year of *Queen Elizabeth* made his will, and made his son executor, who proved the same, and became possessed of the said manor and premises; and that from him the interest and term, by virtue of several wills, &c. came to the plaintiff; and that he is lawfully entitled unto the same; that

that the defendant *Huntington*, by buying certain incumbrances of *Gerrard Crocker* the son, got into all or most part of the premises, and, for divers years, hath taken the rents, issues, and profits, they being above sixty pounds *per annum*. He therefore prays, that the defendant may discover whether any and what consideration was given for the said lease, and to be relieved in the premises.

Wise
against
THE BISHOP OF
WORCESTER
AND OTHERS.

The defendants *Huntington* and *Reynell* appeared ; and the defendant *Huntington* put in his plea ; AND FOR PLEA SAID, that he believed the manor, rectory, and parsonage, and all other the premises, were granted by *R. King*, abbot of *Thame*, to *J. Crocker*, to hold as in the bill is mentioned ; that the said *J. Crocker* made his will, and appointed his son *Gerrard*, afterwards *Sir Gerrard*, his executor, who became possessed thereof ; that the same afterwards, by virtue of several wills, &c. came to *W. Crocker* ; that the same manor and premises are, by good conveyances in law, for and upon good and valuable considerations in money really paid by him, conveyed and assured to him for the remainder of the term of years in the said lease ; and that he, and those under whom he claims, have been in possession above fifty years. But as the plaintiff had set forth no sufficient title in his bill, or given the defendant any notice of his pretended title before the purchasing of the premises for valuable considerations, he demanded the judgment of the Court, whether he should put in any further answer.

The said plea was saved to the defendant at the hearing by the Court ; but the plaintiff insisting that notice had been given before the defendant's purchase, and of his taking advantage of the forfeiture of the old lease, by re-entry, for non-payment of rent,

Saved to the
hearing.

The defendant put in a further answer, and alledged, that it might be true that an avoidance or forfeiture was made of the old lease by re-entry, though he knew it not of his own knowledge ; and denied any combination with the other defendants by non-payment of rent, &c.

Further answer.

The other defendants appeared, and answered the bill.

The plaintiff replied ; issue was joined ; and witnesses were examined on both sides.

The cause came on the eleventh day of *December* last ; and on hearing counsel on both sides, and after long debate, it was ordered to stand over for the Court to consider.

The cause came on this day ; and on hearing counsel on both sides ; and the Court having maturely and seriously advised upon the premises ;

IT IS ORDERED BY THE COURT, that as to the manor, farm, and demesne of *Hook Norton* mentioned in the bill ; and also as

Wise
against
THE BISHOP OF
WORCESTER
AND OTHERS

to the defendants tithes purchased of the *Lord of Downe*, and to all and singular other the premises in the bill specified, the defendants *Huntington* and *Reynell* be and stand clearly and absolutely dismissed of and from the said bill, and the matters and things therein contained, without prejudice to the plaintiff's title at law upon the old lease, in case he hath any.

AND IT IS FURTHER ORDERED, that the plaintiff, and all others that shall hereafter claim the premises from, by, or under him, shall be and are hereby relieved against the defendant, the *Lord Bishop of Oxford*, and his successors, for the time being, and all claiming under them, for the term expectant after the said lease for divers years is expired ; and the said defendants *Huntington*, *Reynell*, and the *Bishop of Oxford*, are to have their costs of suit ; and the Court will consider of the bill of costs when the same is made.

MILARY TERM
20. CAR. 2.

COMPORT against OLIVER.

Surrey, 1st February 1668.

The occupiers
of garden
ground in the
parish of *Lambeth*
are to pay
4s. an acre in
lieu of tithes.

THE plaintiffs, as lessees or farmers, to *R. Porey*, doctor in divinity, of the tithes and profits of the rectory of *Lambeth*, in the county of *Surrey*, exhibited their bill to be relieved for the tithes in kind of *oysters, trees, plants, and herbs*, and other materials of gardening, growing in the gardens of the defendants, within the said parish, and by them sold for four years past.

The defendants answered ; and denied, that tithes in kind are due for the titheable matters aforesaid ; FOR THAT, time out of mind, there hath been a custom within the said parish for all occupiers of garden grounds to pay yearly to the rector of the said parish, or farmer of the tithes thereof, four shillings for every acre of ground planted with the titheable matters aforesaid.

Upon hearing counsel on both sides, and reading the depositions of several witnesses proving the said custom ; and upon much debate of the matter ;

IT IS THIS DAY ORDERED BY THE COURT, that the said defendants shall be, and hereby are, absolutely dismissed out of this court of and from the said bill, and the matters and things therein contained.

BALL

BALL *against* KEYBURNE and Others (a).EASTER TERM
21. CAR. 2.*Buckinghamshire, 10th May 1669.*

THE bill stated, that the wardens and scholars of *New College*, The plaintiff, as lessee of *New College*, in *Oxford*, claims a portion of the tithes of the parish of *Wooton* in kind. in the university of *Oxford*, are seised, in right of the said college, of and in a portion of tithes in the parish of *Wooton*, called *Longvile*; that, on the tenth of *November*. in the sixteenth year of this king, they demised the said tithes for ten years to the plaintiff, and that by virtue thereof he is intitled to all the tithes within the said portion, as well predial as personal, in kind; and also to tithe for the herbage for barren cattle, according to the rate of two shillings in the pound yearly; that the defendants, for three years past, were farmers and occupiers of certain grounds within the said portion and tithing, called *Bidwell Hill*, *Bidwell Meadow*, and *Little Beryfield*, with the portion or tithing aforesaid, and had several sorts of tithes due there, in the said years, to the plaintiff.

The defendants answered, and set forth, that there are certain The defendants plead, that the tithes are payable according to certain customary rates. customary rates and payments within the said portionary to be observed, according to the custom of the said parish of *Wooton*, THAT IS TO SAY, for sheep bought after *Candlemas* no tithe wool in kind is due, but fourpence for every hundred of sheep for the space of every month, and an halfpenny for every sheep bought before *Candlemas*, and not shorn. An halfpenny yearly by every owner or occupier of land within the said portion for every calf and every lamb under the number of seven; and if there are seven calves, or seven lambs, tithe is due in kind; the owner or occupier of the said portionary tithes for the time being paying three halfpence for the same; if eight calves, the owner of the tithes is to pay one penny; if nine, then one halfpenny; if ten, then one in kind. That tithe milk ought to be paid on *Saint Mark's Eve* and the next morning, and not before, and from thence every tenth night and morning until *Lammas Day*, and no longer. That if any ewe or lamb, which were wintered, be sold, by any of the owners or occupiers of any lands within the said portion, before *Saint Mark's Day*, then only one halfpenny is due for the tithe thereof; that if any such owner or occupier of lambs have but six lambs in all, or six odd lambs, then the owner of the said tithes is to have an halfpenny a lamb; if seven, then one lamb in kind, paying to the owner thereof three halfpence for the same. That the owner or occupier of lands within the said portion is to pay only for calves, sheep, fleeces of wool, and pigs, under the number of seven, for every one of them an halfpenny, and no tithes in kind; that if any sheep be sold before shearing-time, being wintered there,

(a) But see the case of *Aldworth v. New College*, 25. Car. 2. in which it is decreed that the present plaintiff *Ball* has no right to the small tithes of *Longvile* Portion.

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against
KEYBURNE
AND OTHERS.

the owner of the tithe is to have only one halfpenny, unless other sheep be bought in their places, and then the tithe wool is due in kind ; that if any sheep be bought in the beginning of the year, and sold again before *All Saints Day*, that then the owner of the tithes shall have a rate tithe, viz. fourpence for a month for every hundred of sheep. That if the owner or occupier of lands within the said portion do sell their kine and calves, whether having but six, then only an halfpenny for every calf ; and so if the calves are weaned ; if seven, then the owner of the tithes is to have one calf ; if under seven, and sold to the butcher, then the tenth penny is due for the tithes.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides.

An issue directed to try the rates as to the tithes of milk, calves, wool, and lambs.

Now, upon hearing, the Court directed a *trial at law* upon this issue, whether the tithe of milk, calf, wool, and lamb, be due in kind from the owners and occupiers of lands within the said portion of *Longvile*, to the owners of the said portion of tithes for the time being, or the said rate tithe customary aforesaid in lieu of all tithes of milk, calves, wool, and lamb.

The tithes of barren cattle decreed.

AND IT IS FURTHER ORDERED BY THE COURT, that the defendant *W. Rice* do pay to the plaintiff tithe for eight steers or barren cattle for six weeks, after the rate of two shillings in the pound for a year's rent of the said lands enjoyed by him.

A verdict is found for the plaintiff,

A trial was accordingly had, and a verdict passed for the plaintiff.

3d Dec. 1669. and the other tithes decreed in kind.

THE COURT, therefore, ordered, that the defendants do pay the values of their tithes in kind which they had upon their several lands in *Bidwell Hill*, *Bidwell Meadow*, and *Little Beryfield*, within the portionary aforesaid, in the time aforesaid, according to the values set forth in their answers, the plaintiff being willing to accept the same.

And it being alledged by the defendant's counsel, that the plaintiff had not proceeded against the defendant *T. Keyburne* since his answer,

IT IS ORDERED BY THE COURT, that he be dismissed with his costs, but the plaintiff to have his costs against the rest of the defendants.

MATTHEW HALE.
CHR. TURNOR.

ANTHONY,

ANTHONY, Clerk, *against* SMITHSON.EASTER TERM
21. CAR. 2.*Yorkshire, 14th June 1669.*

THE plaintiff as vicar of *Catterick*, in the county of *York*, by his bill prayed to be relieved for all tithes, oblations, obventions, rates, and compositions for tithes, yearly arising within the said parish, for one year ; and in particular setting forth, amongst other things, that the defendant in that year kept several ewes which had lambs, the tithe of which was worth five pounds ; that he kept also other sheep, which he clipped, the tithe wool whereof, and of the ewes, was worth five pounds : all which he ought to have paid to the plaintiff.

The plaintiff
claims tithe of
wool and lamb
within the lord-
ship of *Kipling*.

The defendant answered, and said, that nineteen shillings and fourpence only are due to the plaintiff for and as a customary payment in lieu of the tithe wool and lambs yearly renewing upon all the grounds within the lordship of *Kipling*, in the possession of the defendant, within the said parish ; and that all the grounds which were that year in the defendant's possession are, and time out of mind hath been, within the said lordship of *Kipling* ; which said payment, time out of mind, hath been payable and paid to the vicar upon the twenty-fifth day of *June* yearly.

The defendant
pleads a cus-
tomary rate in
lieu thereof.

The plaintiff replied ; and witnesses were examined on both sides.

Upon hearing, the Court directed a *trial at law* ; the issue to be, whether there is not a customary payment of nineteen shillings and fourpence, time out of mind, payable to the vicar of *Catterick* upon the twenty-fifth day of *June* yearly, in lieu and satisfaction of all tithes of wool and lamb yearly renewing upon all the grounds within the lordship of *Kipling*, within the said parish of *Catterick*, or not ? The equity to be reserved till after such trial.

An issue direct-
ed.

The said cause came on to be further heard this day ; and the Court being informed that a verdict had passed for the plaintiff upon the said issue,

A verdict for
the plaintiff.

IT IS ORDERED BY THE COURT, that the defendant do pay to the plaintiff the value of his tithes of wool and lamb, as they are set forth in the answer for the year 1664, amounting to one pound and four shillings (a).

3d Nov. 1669.
Tithes decreed.

(a) See post. 13th November 1671. 23. Car. 2. another cause between the same parties.

TRIN. TERM,
21. CAR. 2.

STAWBYN *against* SLADE.

Cornwall, 21st June 1669,

The plaintiff
claims tithes of
salt and *pilchards*
landed at *Saint*
Michael's Mount,
in *Cornwall*.

THE bill stated, that the plaintiff now is, and for divers years last past hath been, seised, in his *demesne as of fee*, of the manor and lordship of *Saint Michael's Mount*, in the county of *Cornwall*, with the rights, members, and appurtenances thereof, and of and in a certain harbour, haven, quay, or pier, within the said manor; that, time out of mind, all and every person and persons who bring any *salt* into the said harbour or pier in any ship or vessel, and sell and land the same at the said quay, have accustomed, and of right ought to pay to the lord of the said harbour, quay, and pier, two bushels of salt, according to the measure there used, for the bushelage, anchorage, and other duties of such ship and vessel, and the goods landed and sold out of the same; that he is, and for divers years last past hath been, seised, in his *demesne as of fee*, of and in the tithes of all manner of fish landed, sold, or served at *Saint Michael's Mount*; that, time out of mind, all persons that did land, sell, or save any fish at *Saint Michael's Mount* ought, of right and custom, to pay the tithes thereof in kind, at the landing or saving thereof to the proprietor of the said tithes; that the defendants, in the year 1667, did bring divers vessels and barks loaden with *salt* into the said harbour, and did land or sell the same at *Saint Michael's Mount*, and did refuse to pay the said duty, or any thing in lieu thereof; that in the said year they did land, buy, save, and sell, great quantities of *pilchards* at *Saint Michael's Mount* aforesaid, and did refuse to pay to the plaintiff the tithes or tenths thereof, or to make him any compensation for the same.

The defendants
plead a special
manner of pay-
ing tithe of *pil-*
chards.

The defendants, by their answer, confessed the plaintiff's title to the manor and lordship of *Saint Michael's Mount*, to the harbour, quay, or pier there, and to the tithes and tenths of fish landed, sold, or saved there, except *pilchards*; alledging, that in regard the owners of nets and lines are at a great expence, and employ many servants, called *seyners*, for the taking of *pilchards*, all persons so taking *pilchards*, or that did land, save, or sell the same at *Saint Michael's Mount* aforesaid, have, time out of mind, paid to the proprietor of the said tithes so much money as the tenth part of the shares or money which was paid to the seamen and other persons employed by the owners of the nets and boats amounted unto, viz. the owners of the nets and boats have, towards their charges in providing all things necessary for taking of *pilchards*, one half of the *pilchards* for their extraordinary charges, and the *seyners* and servants have the other half; and the owners do commonly buy their said servants half part; and that after the selling thereof the owners of the nets and boats do, and have, time out of mind, used to pay the proprietor of the said tithes so much money, in lieu of the tithe, proportionably as the tenth

tenth part of the money so paid their servants amounted to ; which hath been, time out of mind, received by the proprietor in full satisfaction of the tithe of all *pilchards* : and they set forth the quantities of *pilchards* they saved and landed.

STAWBYN
against
SLADE.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon opening the pleadings, and reading several depositions, it appearing to the Court that the tithes of *pilchards* and other fish landed or saved at *Saint Michael's Mount* aforesaid, have been, for sixty years past, and upwards, paid to the proprietor of the said tithes in kind. But it appearing that the tithe of all fish landed there had been paid for more than sixty years,

IT IS THEREUPON ORDERED BY THE COURT, that the defendants shall pay to the plaintiff the values of the said *pilchards* so by them landed, saved, or sold at *Saint Michael's Mount* aforesaid, according to the values proved in the said depositions. the tithe of *pilchards* were decreed.

And as to the bushelage of salt demanded by the said plaintiff, for that there is no proof of the landing of any within the time in the said bill mentioned, The defendants dismissed, as to the salt.

IT IS ORDERED BY THE COURT, that the said defendants, as to the said bushelage, shall be and hereby are dismissed.

MATTHEW HALE.
CHR. TURNOR.

WATTS, Clerk, *against* WELDON.
Kent, 21th June 1669.

TRIN. TERM,
21. CAR. 2.

THE plaintiff, as rector of the parish-church of *Swancombe*, in the county of *Kent*, stated by his bill, that he is, and hath been for twelve years past, rector and incumbent of the parish-church aforesaid, and by reason thereof was intitled to all the tithes arising, &c. therein ; that the inhabitants and occupiers of lands in the said parish ought to pay to him their tithes according to common right, as by law they are payable, that is to say, as for all manner of wood cut out for affize for fuel to sell, as also for all underwood employed for faggots, bavins, hoops, kids, hop-poles, and broom staves, *tithes in kind* after the same are made up fit for sale ; such oaks, ashes, and elms, as are yearly sold and employed for timber, their tops kept by themselves, excepted ; as also tithes in kind of all corn, wood, and hay, and of all other predial tithes : that for cattle fatted for sale and agisted cattle, as oxen, bullocks, cows, horses, sheep, and all unprofitable cattle, tithes ought to be paid according to the yearly value of the ground whereon they were fed, except only for every milch cow with her calf (which cows are used for the supportation of the families of the several parishioners in the said parish) ; that for every milch cow and calf there is, by custom within the said parish, paid tenpence,

The rector of *Swancombe*, in *Kent*, claims all his tithes in kind.

see ante, p. 77. a cause between the same parties.

WATTS
against
WELDON.

and no more ; as also twopence for every bullock kept for stock, or any cow being used to milk, and by accident becoming dry, and yet still kept for milk for the future : that the defendant, for two years last past, had been owner and occupier of several marsh and wood grounds therein, wherein, during the same time, had been fatted and agisted a number of oxen, bullocks, heifers, dry cows, horses, sheep, and other unprofitable cattle ; that he had cut down and disposed of, by sale or otherwise, about three thousand loads of wood growing within the said rectory, which was made into bavins, faggots, hop-poles, broom-staves, and for other use to be sold, for which the said defendant ought to have paid tithes in kind ; yet for the said years he hath not paid to the plaintiff tithes in kind for the said wood, nor for the said cattle so fatted and agisted, or any recompence for the same ; and therefore he prayed a discovery and relief in the premises.

The defendant
admits the facts
charged in the
bill ;

The defendant answered, and confessed, that for several years last past he had been owner and occupier of several pastures and marsh grounds in the said parish, within which there had been fatted oxen, dry cows, bullocks, sheep, and other cattle, for the herbage of which he had satisfied the plaintiff for several years last past, except for the sheep that were fed by him for the said two years ; that in the years 1666, 1667, and 1668, he had cut down several quantities of wood made up for sale, viz. into bavins, small bavins, great bavins, faggots, and broom-staves, and had sold them respectively for the several rates mentioned in his answer ; that he had not paid tithes in kind to the plaintiff of the said faggots, bavins, small bavins, great bavins, top bavins, arbour poles, and broom-staves, for the said years, or any recompence for the same, nor for the cattle so fatted, till of late he had satisfied him for the herbage of fatted cattle for divers years past, sheep only excepted, for which he had not paid tithes for the said years : that the reason was, because he was informed of certain customs used in satisfaction for the tithes of wood and cattle, whereon he did rely ; but that the plaintiff, in the year 1667, at two trials between them, obtained two verdicts against him against the said customs ; and also in *Trinity Term* 1668 obtained a decree for payment of tithes in kind of wood, and also for fatted cattle tithes according to the value of the herbage, and for tithe wool and lamb in kind ; whereby the said customs are disallowed ; and therefore submits to the said decree.

and suggests a
modus decimandi ;

which he ad-
mits was de-
clared invalid by
a former decree.

And upon opening the said bill and answer,

The Court
therefore decree
the tithes in
kind to the rec-
tor.

IT IS ORDERED BY THE COURT, that the said defendant shall pay to the plaintiff the tithes of the faggots, bavins, hoops, kidds, hop-poles, and broom-staves, confessed by his answer to be detained from the plaintiff, according to the values thereof mentioned therein ; and for the sheep by him fatted and confessed to be unpaid for, according to the value of the herbage or feeding whereon they were fed.

It

IT IS FURTHER ORDERED, that the said defendant, his heirs and assigns, shall for ever hereafter pay to the said plaintiff and his successors, rectors of the said rectory of *Swanscombe* for the time being, tithes in kind of all wood cut out and affized for fuel, after the same is made up ready for sale; and also of all underwood employed for faggots, bavins, kidds, broom-staves, arbour poles, hoops, and hop-poles, after the same are made up ready for sale (except such oaks, ashes, and elms, as are yearly sold and employed for timber, and their lops kept by themselves, though cut out for sale); and also tithe in kind of all corn, hay, wool, and lamb, and all other predial mixed and small tithes happening or renewing within the lands of the defendant, his heirs or assigns, within the said rectory; and also tithes for all oxen, bullocks, heifers, dry cows, horses, sheep, and all other unprofitable cattle which yield no yearly titheable increase, and which shall be fatted for sale or agisted in any of the grounds of the said defendant, his heirs or assigns, within the said rectory, according to the value of the herbage wherein they shall be fatted or agisted, except draught cattle necessary for the management of a farm, whilst wrought, and necessary saddle-horses, which are tithe-free, and except milch cows and their calves, and each bullock kept for stock, and every cow used bemilch, and by accident becoming dry, and yet kept for milk; for every such cow and calf and every such bullock the said defendant, his heirs and assigns, are hereby ordered and decreed to pay the respective sums of money, that is to say, for such cow and calf, tenpence, and for every such bullock, twopence.

WATTS
against
WELDON.

EDWARD ATKYNS.
CHR. TURNOR.

WATERS *against* DICKENSON.

MICH. TERM,
21. CAR. 2.

Yorksire, 8th November 1669.

THE bill stated, that G. Stanhope, doctor in divinity, chancellor of the metropolitan church of *Saint Peter's*, in *York*, and prebend of *Driffild*, within the said church, being, as others his predecessors therein, seised, *as of fee*, of the parsonage or rectory of *Uborne*, and of the parsonage-house with the appurtenances, and also of a tenement or farm held in *Uborne*, and also of all manner of tithes, farms, rents, profits, and appurtenances to the said rectory belonging, with power of letting leases, did, by indenture dated the tenth of *November*, in the sixteenth year of *Charles the First*, grant to the plaintiff the said rectory, mansion-house, and other the premises, his heirs and assigns, for three lives; by virtue of which demise the plaintiff became intitled to, and ought to have received, the rents and profits of the said parsonage, and the tithes arising therein; that the defendant and several others do

The rector of *Uborne*, in the county of *York*, claims the tithes of the rectory in kind, lying in *Tborpe Underwood*, within the said parish of *Uborne*.

WATERS
against
DICKENSON.

do hold divers parcels of land within the precincts and titheable places of the said rectory, and have sown several acres with wheat, rye, messin, pease, beans, and made their grafs into hay, and taken the same to their own uses, without paying any tithes to the plaintiff, or any composition for the same; that they also have kept great flocks of sheep and lambs, and had yearly raised great quantities of wool; the tithes of all which are due and payable to the plaintiff; but that the defendants have refused to pay the same or make any composition, since the year 1654, pretending, that the said lands lying in *Thorpe Underwood* are not chargeable with tithes in kind, but only a yearly composition of three pounds, six shillings, and eightpence, which, if true, the same hath not been paid to the plaintiff; and sometimes that *Kirkby Hall*, and the lands thereunto belonging, are not chargeable with the payment of tithes except when the same are in the occupation of the tenants; and then a customary tithe, or somewhat by way of composition for the tithes of the premises, hath been usually paid; the non-payments thereof tends to the apparent wrong of the plaintiff: and thereof he prayed relief in the premises.

It appears that by our ancient composition that so long as the lands should be in the hands of the tenants, and of the abbey of *Fountains*, they should pay five marks in lieu of tithes.

The defendant answered; the plaintiff replied; and witnesses were examined; and upon opening the pleadings, and hearing counsel on both sides, and on debate of the matter, and on reading an ancient composition indented between the presentor of the church of *York*, and the abbot and convent of *Fountains*, being of the *Cistercian order*, upon the tithes of *Thorpe Underwood*, dated the seventeenth of *December* 1366, whereby it was agreed between the abbot and the presentor, that *pro bono pacis*, and in recompence of the tithes of hay and corn, the said abbot and convent, so long as those sort of lands, meadow and pasture, should be in the hands of the tenants, and should be let to farm, should pay to the said presentor, and his successors, presentors of the said church of *York*, one yearly pension or yearly rate of five marks sterling of the lawful money of *England* at the feasts of *Pentecost* and *Saint Martin the Bishop*, in winter, by even portions for ever, and a *nomine pæne* for default of payment; and the presentor agreed with the abbot and convent, that, in consideration of the same, the said abbot and convent, and their successors, their tenants, and farmers, as well present as future, should hold their said lands in *Thorpe Underwood* let to farm, and in tenants hands free from payment of the tithes of hay and corn.

And it appearing to THE COURT, upon reading several depositions taken in the cause, that during all the said time since 1654 to the filing of the bill, that part of the lands in *Thorpe Underwood* had been let to farm; and that three hundred acres of land within and part of *Thorp Wood* were in the defendant's possession;

It

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff all the arrears of the said annual pension or annual rate of *five marks* since 1654, amounting to forty-one pounds, six shillings, and eightpence; the defendant to be left at liberty to interplead with the other owners of *Thorpe Underwood* touching their proportions of the said annual pension,

WATERS
against
DICKENSON.

MATTHEW HALE.
CHR. TURNOR.

SKIPP against Voke,

Herefordshire, 15th November 1669.

MICH. TERM,
21. CAR. 2.

THIS was a bill seeking relief for the tithe of hay, fruit, hemp, flax, and other tithes within the parish of *Ledbury*, in *Herefordshire*, and within a portion of tithes in *Ledbury* aforesaid, called *Netherhall Portion*.

The plaintiff claims the tithe of hay and fruit, and hemp and flax, within *Netherhall Portion*, in the parish of *Ledbury*, in *Herefordshire*.

The defendants set forth a *modus decimandi* for hay and fruit; and said, that the tithes of hemp and flax are not due to the plaintiff, but to the vicar of *Ledbury*.

The plaintiff replied; and witnesses were examined on both sides; and upon hearing counsel, and reading the depositions of several witnesses, a trial at law was ordered to try, whether there be a *modus decimandi* for the tithe hay and fruit? and, whether the tithe of hemp and flax ought to be paid in kind by the defendants to the plaintiff?

Issues directed to try a *modus* respecting hay and fruit, and the plaintiff's right to the hemp and flax.

A trial was accordingly had, and a verdict was found for the plaintiff.

And the jury found, that within the parish of *Ledbury* there is not, nor hath been from the time whereof the memory of man is not to the contrary, a custom and manner of tithing, that is to say, that the defendant *Voke*, and all those whose estate he now hath of and in a farm called *Asblands*, in the occupation of him in the aforesaid parish of *Ledbury*, and all those under whom he claimeth, from the time whereof the memory of man is not to the contrary, have paid, and ought to pay, to the proprietor or his farmer, for the time being, of the portion of tithes called *Overhall Portion*, and to the proprietor or farmer for the time being of the portion called *Netherhall Portion*, yearly, the sum of eighteen-pence of lawful money, that is to say, for lands called *Brass's Land* sixpence, *Skyunner's Land* fourpence, *Grubb's Lands* twopence, and *Hall Lands* sixpence, that is to say, one moiety thereof to the proprietor or his farmer of *Overhall Portion*, the other moiety to the proprietor, or his farmer of *Netherhall Portion*, in the name, lieu, and satisfaction of all tithes of hay and fruit yearly growing, &c. upon the farm and lands in the occupation of the said *Voke*.

The jury find that there is no *modus* respecting the lands in question, as to the tithe of hay and fruit.

It

SKIP
against
Voxl.

It was further found, there is not, nor hath been, from time whereof the memory of man is not to the contrary, a custom and manner of tithing, that is to say, that the defendant *Rogers*, and all those whose estate he now hath, and under whom he claimeth, of and in ten acres of meadow, have paid, and ought to pay, by all the time aforesaid, yearly, to the proprietor or his farmer for the time being of the said portion of tithes called *Netherhall Portion*, the sum of one shilling and sixpence of lawful money of *England*, that is to say, one moiety thereof for *Overhall Portion*, and the other moiety for *Netherhall Portion*, in lieu and satisfaction for all the tithes of hay and fruit yearly growing, &c. upon the said ten acres.

The jury further found a customary manner of tithing in a farm or lands in the occupation of the defendant *Bennet* to the proprietor or his farmer of the said portions; the several sums, to wit, for lands called *Flight's Lands* eightpence, *Pool's Land* fourpence, *Sarjbes' Land* one shilling and twopence, *Jenkin's Land* fourpence, *Hopkins's Lands* twopence, in all two shillings and eightpence, in moieties, to the said proprietors or farmers of the said portions, in lieu and satisfaction of all tithes of hay and fruit, yearly, &c. upon the aforesaid lands, meadow and pasture.

A new trial applied for and refused.

The cause came on to be heard on the twenty-fifth day of *April* last; and upon hearing counsel, and producing the *possession*, the defendant's counsel desired a *new trial*. But THE COURT did not think fit to grant it.

The tithes decreed in kind.

BUT IT WAS THEN ORDERED, that the defendants should respectively satisfy and pay to the plaintiff the value of the said tithe of hay and fruit for the said years in the bill mentioned (a).

MAT. HALE,
CH. TURNON,
TIM. LYTTLETON,
HUGH WYNDHAM,

(a) But see the case of *Skinner and Others v. Dickeson and Others*, 24th November 1671, 23. Car. 2. respecting tithes in the said parish of *Ledbury*, in which a *modus* of 20d. a year was found due to the proprietor of the above por-

tionary, in lieu of tithes of hay and fruit. See also *Townsend v. Skip*, 6th June 1678, the 30. Car. 2. and *Walker v. Walker*, 10th June 1710, Trinity Term, 9. Anne.

MICH. TERM,
21. CAR. 2.

BOLES, Clerk, against BERKLEY.

Northamptonshire, 26th November 1669.

The vicar of *Norton* claims small tithes of a piece of ground called *Thorp*.

THE plaintiff, as vicar of the parish of *Norton*, in the county of *Northampton*, filed a bill to be relieved for *small tithes* due from the defendant, for a certain pasture or ground called *Thorp*, otherwise *Thorp's Ground*, and elsewhere within the said parish and titheable places thereof, for one year, to the value of thirty-three

three pounds, which the defendant detained from him under several pretences.

BOLLES
against
BERKLEY.

The defendant stated, that the plaintiff is vicar of *Norton*, and ought to have the minute tithes, or a composition for the same; that he was, and still is, tenant of the lands in the bill mentioned; that the place where, by ancient deeds and records, is mentioned to be in *Daventry*, and not in *Norton*; that since the former proceedings (a), the defendant, on taking a lease of the college of *Christ Church*, in *Oxford*, of the said lands, and the tithes thereof, had discovered that until of late years no tithes have been paid for the same to the vicar of *Norton*, and had found writings that the said vill of *Thorp* is an ancient parish of itself, within the said parish of *Norton*, and that, the same coming lately to his knowledge, he could not insist upon the same on the former hearing; that the said lands and advowson of the church of *Thorp* were conveyed to the priory and convent of *Daventry*, and so continued until the dissolution of the said priory, which was about the sixteenth year of *Henry the Eighth*, and not dissolved by the statute 27. or 31. *Hen. 8.* whereupon the former decree was grounded; that upon the dissolution of the said priory KING HENRY THE EIGHTH, by his letters patent, granted the premises to *Cardinal Wolsey* and his heirs, which was confirmed by a private or particular act of parliament; that afterwards the said *Cardinal* was attainted of a *præmunire*, and the said estate thereby forfeited to the king; that after the said *Cardinal Wolsey* had began the erecting of the college whereupon stood the priory of *Saint Frideswide*, in *Oxford*, the said king, by his letters patent, dated the eleventh of *November*, in the thirty-eighth of his reign, granted the premises to the dean and chapter of *Christ Church*, and the tithes of lands lying in the county of *Northampton*; by virtue of which the dean and chapter became seised, who, upon the eighteenth of *November*, in the nineteenth year of his now majesty's reign, did demise to the defendant several pasture grounds and meadows in *Thorp*, with all the tithes thereof, to hold the said premises and tithes to the defendant, under the rents therein mentioned; that he entered, and hath enjoyed the same without paying of tithes, and hoped to continue so. He denied that he hath unjustly withholden the tithes from the plaintiff; and that the said grounds lie within the parish of *Norton*; and he set forth the value of the tithes; and denied the plaintiff's right thereunto. He confessed, that before discovery made of such evidence to prove *Thorp* to be a parish of itself, he had paid to the plaintiff some minute tithes, but he hoped that he should not be concluded by his mistake.

The plaintiff replied; and issue being joined, witnesses were examined on both sides.

(a) 28th June 1666, 18. Car. 2.

BOLLES
against
BARKLEY.

But on reading
divers ancient
records it ap-
peared that
Thorpe is a vill
within the pa-
rish of *Norton*

The cause came on to be heard the twenty-second instant, and upon opening the pleadings and hearing counsel on both sides, and upon reading divers ancient records, produced on both sides, it was ordered, that the cause should stand over to be further heard this day; when upon hearing counsel on both sides, and reading the indenture and accounts, concerning the ninth sheaf, ninth fleece, and ninth lamb, in the fourteenth year of KING EDWARD THE THIRD, remaining in this court; whereby it appeared that *Thorpe* is within the said parish of *Norton*; and on the counsel for the defendant consenting, on behalf of the defendant, and of the dean and students of *Christ Church* in *Oxford*, that the said matter shall be decreed for the said plaintiff.

and thereupon
the small tithes
of *Thorpe* are by
consent decreed
to the plaintiff.

IT IS THEREUPON ORDERED BY THE COURT, by and with the consent of all parties, that the defendant shall pay to the said plaintiff twenty-one pounds for the arrears of tithes, demanded by the said bill, with moderate costs, and that the defendant shall continue the payment of the *small tithes* for the said ground to the plaintiff, for so long as the defendant shall hold the same, and the plaintiff shall continue vicar of the said parish of *Norton* (a).

MATTHEW HALE.
CHR. TURNOR.

(a) There are other proceedings in the book of decrees and orders, respecting this parish, in the fifteenth year of *James the First*, and in *Hilary Term*, the first of *Charles the First*.

HILARY TERM
21. CAR. 2.

MARSH, Clerk, against HOLMSBY,

Kent 25th November 1669,

The rector of
Ruckinge in *Kent*,
claims the great
and small tithes.

THE plaintiff, as rector of the rectory and parish church of *Ruckinge*, in the county of *Kent*, set forth, by his bill, that he ought, as rector of the said parish church of *Ruckinge*, to have all predial and personal tithes, great and small, within the said parish.

The defendant
pleads a *modus*
of 8d. the acre,
in lieu of all
tithes.

The defendant answered, and set forth, that the ancient custom and manner of tithing, time out of mind, for marsh lands, used for the feeding and depasturing of heifers, bullocks, sheep, and other dry cattle, and for making of hay, hath been to pay eight pence the acre, in lieu of all tithes, and other profits, and dues, for and in respect of the said lands.

The plaintiff replied; and witnesses were examined.

Upon hearing counsel,

An issue was directed to try, "whether within the said parish of *Ruckinge*, there be a custom, to pay the rector, for the
" time

"time being, for marsh lands there, at the rate of eightpence the acre, in lieu of all tithes?" and a verdict passed for the plaintiff; and upon reading the *postea*, it was referred to the auditor of the county, to ascertain the values, unless, on payment of costs, cause were shewn; which commission to ascertain the values accordingly issued, and was executed, and returned; and on the eleventh instant, it was referred to the deputy remembrancer to ascertain the values, and to make his report, which he did; and now upon reading the said order, certificate, and report,

MARSH
against
HOLMESBY.

A verdict against
the *modus*.

The values re-
ferred to the au-
ditor and re-
membrancer.

IT IS ORDERED BY THE COURT, that the said defendants shall pay to the plaintiff, the respective sums reported due for their tithes, unless cause, they paying five shillings costs before they be heard; and if no cause be shewn to the contrary, this decree to be absolute, without further motion by the plaintiff.

The tithes de-
creed in kind.

EDW. TURNOR.

CHR. TURNOR.

TIM. LITTLETON.

STANLEY, Clerk, *against* CASHEERE.

HILARY TERM
22 CAR. 2.

Kent, 6th February 1670.

THE bill stated, that for twenty years past, the plaintiff had been, and still was rector of the rectory and parsonage of *Ripple*, in the county of *Kent*, and ought to have all, and all manner of tithes, great, small, mixed, and other tithes of what kind soever, arising in the said parish; that the defendant for fourteen years last past, was owner and occupier of one messuage, and one hundred acres of arable and pasture lands, in the parish aforesaid, and did sow the same with corn and grain, and did carry away the same, without setting out the tithes thereof.

The rector of
Ripple in the
county of *Kent*,
claims tithes.

The defendant denied that any sort of tithes were due to the plaintiff, for that the said lands were parcel of the demesnes of the manor of *Ripple*, and also of the possessions of the late dissolved monastery of *St. Augustine*; and that *John*, the last abbot was seised thereof in fee, in right of his convent, and being so seised, the said abbot and convent, by their deed, dated the thirty-first of *July*, in the thirteenth year of *Henry the Eighth*, did surrender to the said king, his heirs, and successors, the said abbey, and all the manor, lands, and tenements thereunto belonging; and that by virtue thereof, and of the statute 31. *Hen. 8.* he became seised thereof, to him, his heirs, and successors, in right of his crown; that the said abbot, at the time of his surrender, and all his predecessors, time whereof the memory of man is not to the contrary, did hold the said lands, discharged of the payment of tithes, and that the same came so discharged to the said king, under whom the defendant claims.

The defendants
pleads that the
place belonged
to the abbey
of *St. Au-*
gustine, and was
surrendered, dis-
charged of tithes to
Henry the Eighth,
from whom the
defendant de-
rives his title.

And

STANLEY
against
CASHEERE.
On evidence of
the land belong-
ing to the abbey.
The defendants
dismissed.

And upon reading a copy of an inquisition taken in the thirty-first year of *Henry the Eighth*, whereby it appeared, that the abbot of *Saint Augustine* was seised of the said manor of *Ripple*,
IT IS ORDERED BY THE COURT, that the defendants shall be dismissed of and from the said bill, and the matters and things therein contained.

EASTER TERM
23. CAR. 2.

WENHAM against THETCHER.

Sussex, 30th May 1671.

The tenants of
the manor of
Otham in *Sussex*
pay 3*l.* a year
to the vicar of
Haylesbam in lieu
of tithes.

THE bill was to be relieved for certain tithes in kind, in the bill mentioned, from sixty acres of land, lying within the parish of *Haylesbam* in the county of *Sussex*, and in the defendant's occupation.

The defendant denied the plaintiff's right to tithes in kind, for that the lord of the manor of *Otham* hath for forty years paid a composition of three pounds *per annum*, to the vicar of *Haylesbam*, in lieu, and discharge of all tithes, issuing out of the said manor, and that the said composition is paid for the said lands in the defendant's occupation.

4th Dec. 1671.

The Court directed a *trial at law*, whether tithes were due and payable to the vicar of *Haylesbam*, for the lands in the defendant's occupation? and a verdict was given for the defendant.

THE COURT accordingly ordered the said bill to be dismissed.

TRIN. TERM,
23. CAR. 2.

HALSEY, Clerk, against OGLANDER.

Sussex, 26th June 1671.

The plaintiff, as
rector of *East*
Deane, claims
tithes of coppice
wood, cut in
Red Copse, and
Little Copse.

THE bill stated, that for ten years past, the plaintiff had been rector and incumbent of the rectory of *East Deane*, in the county of *Sussex*, and had duly officiated the cure there, and, by reason thereof, ought to have had all tithes, duties, payments, and profits, to the same belonging; that the plaintiff's predecessors have, time out of mind, had the tenths and tithes of all titheable wood, coppice, and wood-ground, within the said rectory, or some composition; or satisfaction for the same; that the defendants, within seven years past, have felled, cut, and carried away, from *Red Copse* and *Little Copse*, two hundred and forty acres of coppice wood, the tithe of which is worth one hundred and twelve pounds, without setting out the tithe of the same.

The defendants answered, that no such tithes were due from them to the plaintiff.

On

On a *trial at law*, in which the issue was, whether the tithes of the two copses, called *Red Copse*, and *Little Copse*, afore said, or either of them, are due to the plaintiff? a verdict was found, at the summer assizes, for the defendants, that no tithes were payable.

HALSEY
against
OGLANDER.
An issue directed to try the plaintiff's right.

Afterwards the plaintiff obtained a *new trial*, and thereupon another verdict was given for the defendants; and in *Easter Term*, the twenty-fourth *Charles the Second*, the plaintiff obtained an order for a *further trial*, upon payment of costs; after which he did not proceed. Therefore, the cause now coming on, and on hearing counsel on both sides,

Two verdicts found against his claim.

IT IS ORDERED BY THE COURT, upon reading the *posseas*, that, in case the plaintiff do pay the costs within a week, he shall proceed to another trial, and injunction be awarded; but in case he do not pay the said costs, and stay the action, the bill shall stand dismissed.

The defendant dismissed.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

CHAPPEL, Clerk, *against* WARD.

MICH. TERM,
23. CAR. 2.

Derbyshire, 10th May 1671.

THE plaintiff was rector of *Matlock*, in *Derbyshire*. The cause came on to be heard in *July* last, and the Court ordered a trial at law;

The plaintiff, as rector of *Matlock*, claims, with certain exceptions, the tithe of lead ore dug within the parish.

The issue was, whether the customary duty of the *tithe tenth dish*, or the tenth part of all the *lead ore*, except, *Lott Ore*, *Smitham Offal*, and *Forestead*, of which, it was agreed, no tithe is to be paid by the miners to the said rector, gotten within the parish of *Matlock*, except in *Willersley* and *Old Meadow*, cleansed, washed, and dressed from the rubbish, at the charge of the miner, time out of mind, hath been or of right ought to be paid, by the miner or getter thereof, to the rector of the parish church of *Matlock*, for the time being; the rector allowing to such miner a penny for every *tenth dish*, in consideration of the washing, dressing, and cleansing thereof.

An issue directed.

Upon entering into the said trial, it appeared that, over and above the said *Lott Ore*, *Smitham Offal*, and *Forestead*, which pay no tithes, and the ore gotten in *Willersley* and *Old Meadow*, there ought also to have been excepted in the said custom the *Meere dish*, and *Meere dishes*, payable to the bar-masters for freeing the ground, and also such ore whereof ten dishes are not gotten, in any one mine, upon one and the same title, within the said parish, which also, as was agreed by the plaintiff, do

The issue amended, and a new trial ordered.

CHAPPEL
against
WARD.

pay no tithe to the rector; but the defendant taking advantage at the trial, of the said *Meere disb* and *Meere disbes*, for freeing the ground not being excepted, and refusing to try the merits of the cause, the plaintiff was forced to be non-suited. It was therefore prayed that the issue might be amended, and that the *Meere disb* and *Meere disbes*, and also the ore, whereof ten dishes are not gotten in one mine, upon one and the same title, within the said parish, might be excepted in the issue, and a new trial granted to the plaintiff. And upon hearing Mr. BARON WYNDHAM, before whom the trial was had, and on hearing counsel on both sides, the issue was ordered to be amended, as is desired, and a new trial thereon had; the plaintiff paying to the defendant moderate costs for the former trial; and the cause to be tried by a special jury.

1st Feb. 1763.
A verdict for the
defendants.

According to which order a new trial was had; and, upon full evidence on both sides, a verdict passed for the defendants.

IT WAS THEREFORE THIS DAY FINALLY ORDERED AND ADJUDGED BY THE COURT, that the said defendants shall be, and are hereby absolutely dismissed, of and from the said bill, and the matters and things therein contained, with moderate costs.

EDW. TURNOR.
CHR. TURNOR.
T. LITTLETON.
EDW. THURLAND.

MICH. TERM,
23. CAR. 2.

COVENTRY, Knight, against THE BISHOP OF
WINCHESTER.

Somersetshire, 30th May 1671.

The plaintiff claims 16l. a year, in lieu of the tithes of the Town Mills of Taunton. THE scope of the bill was to be relieved for a certain yearly sum of sixteen pounds, in lieu of all tithes, for certain mills in Taunton, in the county of Somerset, for thirteen years past.

The defendants, by their answers, denied any such sum to be due.

Now, upon opening the bill and answers, and reading the several depositions, and a book of account of the estate of *Bilenketyll*, and of an order of dismissal made in *Michaelmas Term*, 16. Car. 2. in a former cause.

Two issues directed.

The Court directed a trial at law, upon two issues.

FIRST. Whether there be such a *modus*, of paying sixteen pounds *per annum*, in lieu of tithes for the said two mills, called the *Town Mills*, or not.

SECONDLY.

SECONDLY. Whether such *modus* be payable to the plaintiff for the said two mills, called the *Town Mills*, and for ten other mills, within the manor of *Taunton* aforesaid, together with the said two mills.

18th Nov. 1672.

In pursuance of which order, a trial was had upon the last issue, and a verdict was given for the plaintiff, viz. that the sum of sixteen pounds *per annum*, was payable, and ought to be paid in lieu of tithes, for the said two mills in *Taunton*, called the *Town Mills*, and for ten other mills within the said manor of *Taunton*.

A verdict for the full on the second issue.

Now, upon hearing counsel for the plaintiff, and no one appearing for the defendants,

IT IS ORDERED BY THE COURT, that the defendants shall pay to the plaintiff, all arrears, and for the future the said *modus*, or sum of sixteen pounds *per annum*, as well for and in lieu of the tithes of the toll of corn and grain ground in the said two mills, called the *Town Mills*, as the ten other mills, within the manor of *Taunton*, first deducting and abating thereout the yearly fee farm rent of forty shillings a year, for the time paid, and to come to his majesty, for and in respect of the said *modus* or annual rent of sixteen pounds *per annum*.

The annual payment decreed, first deducting there out a fee farm rent, due to the king.

ANTHONY, Clerk, against SMITHSON.

MICH. TERM,
23. CAR. 2.

Yorksire, 13th Nov, 1671.

THE plaintiff as vicar of the parish church of *Lattericke* otherwise *Cattericke*, in the county of *York*, stated, that for ten years past, he had been vicar of the parish church of *Cattericke*, and had duly officiated the cure there, and ought to have had all manner of tithes, oblations, obventions, offerings, rates, and compositions for the same yearly arising, &c. within the said parish, and titheable places thereof; and claimed tithes as follows, viz. of colts, calves, lambs, rabbits, pigs, geese, goslings, poultry, bees, pidgeons, wool, and sheep sold with their wool before they were clipped, for which monthly tithe is due, water corn mills, fruit, mint, milk, honey, wax, eggs, cheese, hemp, flax, and other small tithes.

The vicar of the lordship of *Kipling* in *Cattericke*, in *Yorksire*, claims tithes,

and sets out the manner of tithing.

The defendant admitted the plaintiff to be vicar of the parish, but denied that he ought to have any tithes out of the lordship of *Kipling*, in the said parish, for that QUEEN ELIZABETH, was heretofore seised in fee, in right of her crown, of all the tithes of corn, grain, and hay yearly, growing in *Kipling*, formerly belonging, and parcel of the possessions of the

The defendant admitted the vicar's right to tithes in *Cattericke*, but pleads that *Kipling* belonged to the dissolved monastery of *St. Agatha*, and derives a title thereto from Queen Elizabeth.

monastery of *St. Agatha*, and derives a title thereto from

ANTHONY
against
SMITHSON.

late dissolved monastery of *St. Agatha*, within the arch-deaconry of *Richmond*, in the said county, and of all other tithes in *Kipling*, formerly belonging to, and parcels of the possessions of the the late dissolved monastery of *St. Mary*, near the walls of *York*; that her majesty, being so seised, by letters patent, dated the twenty-ninth of *April*, in the nineteenth year of her reign, did grant the said tithes of corn, grain, and hay, in *Kipling*, to *T. and R. Warropp*, their heirs and assigns for ever, under the rent of twelve shillings *per annum*, reserved to her majesty and successors; that her majesty, by other letters patent, dated the eleventh of *April*, in the twenty-first year of her reign, did grant and convey all manner of other the tithes whatsoever in *Kipling*, to *Sir Charles Hatton, Knight*, his heirs and assigns for ever, under the yearly rent of forty shillings, reserved to her majesty and successors for ever; that the several estates and interests of the said *T. and R. Warropp*, and the said *Sir C. Hatton*, in the said several tithes of corn, grain, and hay, and other tithes in *Kipling*, did before *Michaelmas*, 1664, by means of grants and conveyances, come to *Cecil Lord Baltimore*, and that before and since he has continued lawfully seised of and in all the tithes in *Kipling*; that from *Michaelmas* 1664, till *May* 1666, they did detain the tithes of the said titheable matters in *Kipling*, by authority or estate from the said *Lord Baltimore*, under several yearly rents, as they conceived they might lawfully do.

But on reading
the grants stat-
ed in the an-
swer,

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides: and upon hearing counsel on both sides, and reading several depositions taken in the cause, and in a former cause of *Anthony v. Smithson*, and several grants and records in the time of *QUEEN ELIZABETH* and *KING JAMES*, produced on behalf of the defendants, being the several grants of the tithes mentioned in the answers, and on debate of the matter,

the tithes of *Kip-
ling* are decreed
to the vicar of
Catericks.

IT IS ORDERED BY THE COURT, that the defendants shall pay to the plaintiff the values of their said tithes, which they had in the several years aforesaid.

EDW. TURNOR.
CHR. TURNOR.
TY. LITTLETON.
HUGH WINDHAM.

RISDEN,

RISDEN, Clerk, *against* CROUCH.MICH. TERM,
23. CAR. 2.*Kent, 26th Oct. 1671.*

THE bill stated, that the plaintiff, for four years past, is and hath been *vicar* of the parish of *Asbford*, in the county of *Kent*, and ought to have had and received all manner of tithes and church duties, yearly arising, &c. within the said parish, due to the *vicar*; that the defendants for the same time have enjoyed several messuages, lands, and tenements, and several hop grounds planted with hops, within the said parish, and have picked and carried away the same, without setting out or rendering the tithe thereof, or any thing in lieu, and had several other titheable matters and things, the tithe whereof ought to have been answered to the plaintiff, but that they refused, saying, that the plaintiff had no right to the tithe of hops.

The defendants admitted their inhabitancy, and set forth the quantities and values of their hops, and then stated, that there is and hath been an ancient custom, time out of mind (*a*), in the said parish, that every planter of hops shall pay to the *parson* of the said parish, six shillings and eightpence, for every acre in lieu of the tithe thereof, and that the same of right belongs to the *parson* of the said parish, who hath constantly, according to such custom, received the same.

THE COURT declared, that there can be no such custom for the payment of a *modus*, in lieu of the tithe of hops, to the *parson*, for that hops, being in their nature *small tithes*, do belong to the *vicar* (*b*).

THE COURT therefore ordered, that the defendants shall pay to the plaintiff the values of the tithes of their hops which they had in the years aforesaid, according to values set forth in their answers, *viz.* the defendant *Crouch* seven pounds for the two years mentioned in the bill, and the defendant *Lounds*, twenty shillings, for 1669; the plaintiff being willing to accept thereof accordingly.

(*a*) Hops were first introduced into *England*, about the year 1524, and therefore being an article of modern growth, there can be no ancient custom for tithing them, 1. Sid. 443. 1. Vent. 62. 2. Keble, 612. Bunb. 20. 79. Wharton v. Lilfe, 4. Mod. 183. 3. Lev, 365. 12. Mod. 41. Skin. 341,

356, Walton v. Tyers, 5. Bro. C. P. Ca. 99.

(*b*) In the library at *Lambeth*, there is a manuscript of the late Rev. *John Lewis*, minister of *Margate*, p. 20. marked No. 1125, referring to the endowment of this vicarage.

MICH. TERM, THE ATTORNEY GENERAL *against* PHILLIPS, Clerk.
23. CAR. 2.

Dorsetshire, 24th November 1671.

The king claims a portion of the tithes of *Bestwall* in *Dorsetshire*.

THIS was a bill to be relieved for a portion of tithes in *Bestwall*, near *Wareham*, in *Dorsetshire*, late parcel of the possessions of the dissolved monastery of *Sheve*, in the county of *Surry*, whereof his majesty, as was alledged, is seised in fee.

The defendants plead that *Bestwall* is in the parish of *East Stoake*, and that the tithes belong to the rector thereof.

The defendants alledged, that *Bestwall* was within the parish of *East Stoake*, and that the tithes thereof belong to the defendant *Phillips*, as rector of the said parish of *East Stoake*.

Upon hearing counsel on both sides, and reading a decree of this court, made in *Michaelmas Term*, 1665.

An issue directed,

IT IS ORDERED BY THE COURT, that a trial at law be had before a jury of the county of *Middlesex*, by the Lord CHIEF BARON, the issue to be, whether the said tithes of *Bestwall* belong to THE KING, or to the defendant *Phillips*, as rector or parson of *East Stoake*.

with liberty to read the depositions taken in a former cause, of *Wilson v. Harbyn*.

AND IT IS FURTHER ORDERED, by consent of THE ATTORNEY GENERAL, that the depositions taken in a former cause in this court, between *J. Wilson*, rector of *East Stoake*, plaintiff, and *H. Harbyn*, and others, then occupiers of lands in *Bestwall*, defendants; and also that the depositions of witnesses, taken in this or any former cause touching this matter, may be used on both sides at the said trial, and both parties left to their just exceptions, as to the reading of the depositions of any persons interested in the matter in record, or to any other incompetency of such witnesses, but no exception to be taken to the reading of the said depositions, that the parties are alive, or able to come and attend the trial, or are not subpoenaed.

28th OCT. 1672.
A verdict for the king.

The issue was accordingly tried, and a verdict given for the plaintiff; and now the cause came on for further directions; the plaintiff's counsel praying a decree, and the defendant's a new trial.

A new trial on certain conditions.

IT IS ORDERED that the cause do stand over, and the defendant is to give his answer, whether, in case a new trial shall be directed, he will pay the tithes from the feast of *St. Michael*, in 1668, till this time, and in case this court shall direct a new trial, then the plaintiff is to name a responsible relator, and the defendant is to pay such relator all the costs of the former trial.

18th Nov. 1672.

The defendant consenting to the above proposal, a new trial was ordered to be had at the bar of this court, by a *Middlesex* jury.

But

But THE ATTORNEY GENERAL informing the Court, that he had procured the costs to be taxed, which the defendant had refused to pay, and to have a new trial, prayed, that all the tithes of corn and hay in *Bestwall* (except the tithes of *Long Acre* therein), might be decreed to his majesty, at twenty-five pounds *per annum*, as proved by defendants, with taxed costs ; which was ordered accordingly.

THE
ATTORNEY
GENERAL
against
PHILLIPS.
13th May 1673.
The condition
not performed.
The tithes de-
creed.

EDW. TURNOR.

CHR. TURNOR.

TIM. LITTLETON.

EDW. THURLAND.

SKINNER and Others, *against* DUKESON, Clerk, and Others. MICH. TERM,
23. CAR. 2.

Herefordshire, 24th November 1671.

THE object of this bill was, to preserve a custom or *modus decimandi* of hay and fruit, within the parish of *Ledbury*, for divers farms, lands, and tenements, belonging to the plain-
tiffs. *Birton's Farm* in the parish of *Ledbury*, in *Herefordshire*, shall pay a *modus* of 20d. a year, in lieu of all hay and fruit arising in the said farm. See ante page 107. the cause of *Skip, v. Vokr.* 9th May 1672.

THE COURT ordered a *trial law*, upon the *modus* set forth in the bill, of twentypence *per annum*, for the farm called *Birton's Farm*, in the occupation of the plaintiffs, *E. Skinner*, clerk, or *E. Coucher*, his tenant.

A trial was accordingly had, and a verdict was given for the plaintiff *E. Skinner*, that twenty pence of lawful money of *England*, and no more, ought to be paid yearly, by the owners or occupiers of the said messuage, lands, and tenements called *Birton's Farm*, for the time being, to the proprietors of the said portions of tithes, called *Overhall* and *Netherhall*, or to their farmers for the time being, for the tithes of hay and fruit, out of the said messuage, lands, and tenements called *Birton's Farm*, yearly coming, growing, renewing, and happening.

Now upon reading the said order and *posse*,

IT IS ORDERED BY THE COURT accordingly, and the custom aforesaid, as to the said *Birton's Farm*, is by this Court ordered, adjudged, and decreed.

EDW. TURNOR.

CHR. TURNOR.

HILARY TERM
23. CAR. 2.

HILL, Clerk, *against* PRIMATE, Clerk.

Lincolnshire, 15th February 1671.

The prebendary of *North Grantham* is entitled to a pension of 2l 13s. 4d. from the rector of *Denton*, and a pension of 20s. from the rector of *Barkeston*, in the county of *Lincoln*.

THE bill stated; that the plaintiff, ever since the month of *July*, in the year 1664, had been and still was prebendary of the prebend of *North Grantham*, in *Lincolnshire*, founded in the cathedral church of *Salisbury*; that an annual pension of two pounds, thirteen shillings, and fourpence, out of the rectory of *Denton*, and also twenty shillings out of the rectory of *Barkeston*, were issuing and payable to the prebendary of the said prebend, at *Michaelmas*, yearly; that the defendant *Primate* then was, and for thirty years last past had been rector of *Denton*; that the defendant *Trott*, for seven years past, had been rector of *Barkeston*; and that they refused to pay the said pensions respectively due from them.

The defendants answered, and confessed the plaintiff to be prebendary of the prebend of *North Grantham*, and that they were, and had been for the times mentioned in the bill, respectively rectors of the several rectories of *Denton* and *Barkeston*. The defendant *Primate* confessed, that about the year 1640, he then paid to the prebendary two pounds, thirteen shillings, and fourpence, once or twice, as a pension claimed to be due out of the said rectory of *Denton*, to the said prebendary. The defendant *Trott* denied that he ever paid any pension, or knew that any was due.

The plaintiff replied; and issue being joined, witnesses were examined, and upon opening the pleadings, and upon debate of of the matter;

Forasmuch as this court is not fully satisfied, whether the said pensions were due to the plaintiff or not, it is ordered by the Court, that two actions be brought, upon the two following issues:

FIRST, Whether an annual pension of two pounds, thirteen shillings, and fourpence, is issuing, and payable to the plaintiff, as prebendary of the prebend of *North Grantham*, out of the rectory of *Denton* or not?

SECONDLY, Whether an annual pension of twenty shillings is issuing and payable to the plaintiff out of the rectory of *Barkeston*?

And in both actions, verdicts were given for the plaintiff.

29th June 1672. THE COURT therefore ordered, that the respective defendants do pay the arrears to the plaintiff of the said annual pensions of two pounds, thirteen shillings, and fourpence, and twenty shillings, and that they do pay the same for the

time to come, so long as he shall continue prebendary of the said prebend of *North Grantham*, and they rectors of *Denton* and *Barkstone*.

HILL
against
PRIMATE.

EDWARD TURNOR.

CHR. TURNOR.

TIM. LITTLETON.

EVANS against TYNDALL.

EASTER TERM
24. CAR. 2.

Gloucestershire, 21st April 1672.

THE bill stated, that *H. Hoskyn*, clerk, for two years past, had been lawful vicar of the vicarage of *Bilton*, in the county of *Gloucester*, and had constantly done the duty there, and therefore he, and his farmers, or assigns, ought to have and enjoy all the tithes, duties, and profits thereunto belonging; that, from time whereof the memory of man was not to the contrary, the tithe of all *hops* yearly increasing therein, and the titheable places thereof, as well as all other personal or lesser tithes, had been accustomedly paid to the vicar there, his tenants, farmers, or assigns, by the respective owners and tenants; all which should have been paid; that, by indenture dated the eighth of *July* last, he had demised the same to the plaintiff to hold for three years, if he continued so long vicar there, by which the plaintiff became entitled to receive the tithe of *hops*; that the defendant, during the said time, was tenant of several acres of land, and had growed *hops* thereon worth five hundred pounds, the tithe at least worth fifty pounds, which the plaintiff ought to have received, but which the defendant had refused to pay.

The plaintiff, as lessee of the vicar of *Bilton*, in *Gloucestershire*, claims the tithes of *hops* grown in certain lands in the possession of the defendant.

The defendant confessed, that *H. Hoskyn* had been duly presented, &c. to the said vicarage, and performed the cure there; but denied that all personal or small tithes therein, or that, from time whereof the memory of man was not to the contrary, the tithe of *hops* growing within the said vicarage have been accustomedly paid to the vicar, his tenant, &c. or that the said tithes were ever paid to them during the said time; for that the prebendary of the prebend of *Bilton*, founded in the cathedral church of *Sarum*, was seised of the said parsonage of *Bilton*, with the appurtenances, in his *demesne as of fee*, in right of his said prebend; that for sixty years past all tithes, as well of *hops* as of all manner of corn, grain, and hay, yearly growing within the said parish, have been accustomedly paid to the said prebendary, his tenants, &c. by the respective owners of lands therein; that *A. Hawle*, doctor in divinity, the late prebendary there, by lease, dated the twenty-third of *September*, in the fifteenth year of his present majesty, demised to *Sir John Seymour*, knight, and his heirs, for three lives, at twenty-six pounds and sixpence a-year, all the prebend and parsonage of *Bilton*, together with the parsonage-house, and all glebe land, tithes, tenths, and appurtenances thereto belonging, the presentation of the church of *Bilton*,

The defendant pleads, that the said tithes were due and payable to the prebendary of *Bilton*, and not to the vicar, and deduces a title to himself from the prebendary.

EVANS
against
TYNDALL.

Bilton, and of the vicar-choral of the cathedral of *Sarum*, one tenement called *Beach Farm*, a wood called *Tibbott's Wood*, and all tithes arising out of the said farm; that the said *Sir John Seymour* became seised thereof, and afterwards died; that after his death his son and heir entered into the said premises, and in the year 1667, by sufficient conveyances, sold the premises to the defendant, who became seised thereof, and ought to have all tithes of hops, corn, grain, and hay, growing yearly within the said parish of *Bilton*; and that for two years last past he hath received the same; that he knew not of any lease granted by *H. Hoskyn* to the plaintiff of the tithes of hops; and that if any such was made, the plaintiff could not be entitled to receive the said tithes, they being lawfully due to him the defendant. He also denied that he was occupier of fifty acres of land within the said parish; but that twelve acres of glebe land belonging to the said parish had, for several years last past, been used as hop-grounds, out of which he had had several parcels of hops, the tithe of which were worth five pounds; and he confessed, that he disposed of the said hops to his own use, without setting forth the same, for that he was seised of the said parsonage in his own right, and of all the tithes thereunto belonging.

The plaintiff replies, that the said tithes are due to the vicar, and traverses the payment of them to the pretended-ary.

The plaintiff replied, that all the tithes of hops yearly planted and renewing within the said vicarage of *Bilton*, and all other personal tithes and profits thereunto belonging, were due and payable to *H. Hoskyn*, vicar of the said vicarage, and have been accustomedly payable to the vicar of the said vicarage for the time being, his tenants, farmers, or assigns; and that, by virtue of the said lease from him of the said tithes to the said defendant made, he was lawfully interested to receive the said tithes; WITHOUT THAT, that the said tithes of hops have been accustomedly, and for sixty years last past, paid to the parson of the parsonage of *Bilton*.

Whereupon, issue being joined, witnesses were examined on both sides. The cause came on to receive a hearing this day.

The defendant is dismissed from the payment thereof.

IT IS ORDERED BY THE COURT, that the said defendant be, and is hereby dismissed this Court of and from the said bill, and all the matters and things herein contained, without costs.

EDWARD TURNOR.
CHR. TURNOR.

DICKENS

DICKENS *against* DEARSELEY.TRIN. TERM,
24. CAR. 2.*Suffolk, 20th June 1672.*

THE bill stated, that the plaintiff, for eight years last past, hath been farmer of the parsonage of *Cowling*, in the county of *Suffolk*, by lease, dated the sixth of *December*, in the fourteenth year of his present majesty, made by the master, fellows, and scholars of *Trinity Hall*, in *Cambridge*, to whom the inheritance belongeth; that by virtue thereof he is lawfully entitled to, and ought to have and receive yearly, all the tithes, great and small, whatsoever, arising, &c. within the parish, which have been used to be paid *in kind*, or such composition for them as the farmers of the parish, for the time being, and the parishioners could agree upon; that the defendants did, within the year 1670 ending at *Michaelmas*, keep divers milch cows, and made cheeses, and had fallen from the said cows divers calves, and also had lambs fallen, and did depasture in winter divers sheep, commonly called *boggetts*; and had bees, from which they had wax and honey; and also had apples, pears, and other fruit, and chickens and other poultry; and had several other titheable matters; the tithes of all which were of considerable value, and ought to have been paid to the plaintiff; which they refused to do, on a pretence that tithes in kind were not due to the plaintiff, but that certain rates or sums of money were payable in lieu thereof, by virtue of some award made by LORD NORTH between *L. Webb*, farmer, of the said parsonage; which award was made a decree in the court of chancery, or in this court.

The plaintiff, as farmer, claims the great and small tithes of the parsonage of *Cowling*, in the county of *Suffolk*, by virtue of a lease from *Trinity College*, in *Cambridge*.

The defendants answered, and said, they believed the plaintiff might be farmer of the said parsonage and tithes; that the inheritance doth belong to the said college; and that the tithes, either in kind or customary payments in lieu thereof, do belong to him; that they are ready to pay for the tithes as they arise or grow due, either in kind, or by custom time out of mind continued; that they do not believe that any rates or sums of money are due and payable in lieu of tithes by virtue of any award; but that the customs and manner of tithing within the said parish for milch cows, and for the milk and cheese made and coming of the said cows, and for the calves which have fallen from the said cows, are, from the time whereof the memory of man is not to the contrary, to pay for every milch cow, and for the milk and cheese thereof, fourpence yearly, and no more; and for every calf that hath fallen from such milch cow, sixpence, and no more; but that wool, lambs, and other small tithes, arising, &c. therein, are to be paid in kind, or yearly compounded for, as they could agree, and the money paid yearly at *Lammas*.

The defendants admit the plaintiff's right,

and state a special manner of tithing within the parish.

Upon

DICKENS Upon opening the bill and answer, and hearing counsel for the
against plaintiff, who did not oppose the custom of fourpence a milch
DEARSELEY. cow in lieu of tithe milk and cheese, as in the answer is set
 The custom of forth ; and on hearing the defendant's counsel ; and reading
 fourpence a cow several depositions taken in the cause ; and a verdict at law in
 in lieu of milk the time of the late *Queen Elizabeth* ; and other evidences ;
 and cheese ad-
 mitted.

The tithes of IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT,
 calves in kind, that the said custom of fourpence for every milch cow shall con-
 &c. decreed, as tinue as heretofore it hath been used ; and that the said defend-
 stated in the an- ants shall pay to the plaintiff for their milch cows according to
 swer. the said custom of fourpence a milch cow ; and shall also pay the
 tithes of their calves in kind, and the values of all other the
 tithes, as the same are set forth in their answers, except for the
 feed or herbage of such cattle as are reared for the pail or the
 use of the dairy ; for which THE COURT declared no tithes are
 by law due.

EDWARD TURNOR.

CHR. TURNOR.

TIM. LITTLETON.

HUGH WYNDHAM.

Mich. Term,
 24. CAR. 2.

LORD LEIGH *against* DOWNES, Knt.

Warwickshire, 18th November 1672.

The plaintiff THE scope of the bill was, to compel the defendant to pay
 claims 'tithe of tithes of a certain coppice wood in the hamlet of *Finham*, in
 wood of a cop- the parish of *Stoneleigh*, called *Gregory's Grove*, otherwise *Grange*
 pice in the parish the parish of *Stoneleigh*, called *Gregory's Grove*, otherwise *Grange*
 of *Stoneleigh*, in *Grove*, otherwise *Neitherwood Grove*, containing forty acres, to
Warwickshire, the plaintiff, as owner of the said rectory or parsonage impropr-
 called *Gregory's* ate of *Stoneleigh*.
Grove ;

Upon opening the bill and answer, and reading a record of the
 twenty-sixth year of *Henry the Eighth* out of the first fruits office,
 whereby it appeared that the late monastery of *Stoneleigh* was
 one of the lesser monasteries ; and also several depositions taken in
 the cause ; and on full debate ;

and on its ap- IT IS ORDERED BY THE COURT, that the plaintiff shall bring
 pearing to have an action of debt upon the statute 2. *Edw.* 6. c. 13. against the
 been parcel of a defendant, for not setting out the tithes of the wood cut down in
 monastery, the the said coppice in the bill mentioned ; and that at the said trial,
 Court directed a which shall be before a special jury, the defendant shall insist
 trial on two only upon these two particulars following :

12th Feb. 1672. FIRST, That the said wood, together with a messuage and
 1st Whether this lands called *Hellinghall Grange*, were formerly part of the posses-
 grove was parcel sions of THE CROWN OF ENGLAND, and came to the crown by the
 of the abbey of act of dissolution of monasteries, and were parcel of the possessions
Stoneleigh before of the abbey of *Stoneleigh*, and so were at and before the council
 the council of of *Lateran* ; that the abbot and brethren of the said abbey were
Lateran, and of of
 the *Cistercian* or-
 der.

of the *Cistercian order* ; and that they usually held the same in their own possession, and so held the same at the time of the dissolution. LORD LEIGH
against
DOWNES.

SECONDLY, That the defendant had yearly paid to the vicar of *Stoneleigh* for the said messuage and premises, and the tithe of wood spent in or about the same, a *smoke penny*, and that no tithe was ever paid for the same. adly, Whether
a *smoke penny*
be not due in
lieu of tithe
wood.

In pursuance of which order a trial was had, and a verdict was given for the defendant. 1st Dec. 1676.
Verdict for the
defendant on

In *Trinity Term*, in the twenty-fifth year of *Charles the Second*, a new trial was granted, and another trial was had ; and upon full evidence the plaintiff was nonsuited. both points.

Upon reading the said orders and *postea*, the defendant's counsel prayed that the bill might be dismissed ; and, on hearing counsel for the plaintiff, IT IS ORDERED BY THE COURT accordingly. Ordered by the
Court accord-
ingly.

WM. MONTAGUE.
TIM. LITTLETON.
VERE BERTIE.

JACOB, Bart. *against* SEMAYNE.

MICH. TERM,
24. CAR. 2.

Middlesex, 30th October 1672.

THE bill stated, that the plaintiff's father was seised in fee of the rectory of *Bromley Saint Leonard's*, in the county of *Middlesex*, and of all tithes and profits thereunto belonging, and in his life-time made his will, and therein appointed the plaintiff his executor, and died on the tenth of *March* 1665, so seised. The plaintiff
claims the tithes
of *Bromley Saint
Leonard's*, in
Middlesex.

The defendant set forth, that the lands he held in the said parish are part of the manor of *Bromley Hall*, which anciently, and at the time of the dissolution, was parcel of the late dissolved priory or monastery of *Christ Church*, in *London*, and exempted from payment of tithes. The defendant
pleads, that his
lands were par-
cel of the mo-
nastery of *Christ
Church*.

Upon reading letters patents granted in the thirty-seventh year of *Henry the Eighth* to one *Morrison* of the manor of *Bromley Hall*, But on reading
the grant of
Bromley Hall,

THE COURT ordered the defendant to pay to the plaintiff the values of the tithes by him withheld in the years mentioned in the bill, according to the proofs in the cause. the Court or-
dered the tithes
to be paid.

EDW. TURNOR.
CHR. TURNOR.
TIM. LITTLETON.

BRABOURNE,

MICH. TERM,
24. CAR. 2.

BRABOURNE, D. D. *against* EYRES, Knt.
Middlesex, 18th November 1672.

The vicar of *Nortball*, in *Middlesex*, claims tithes of wood felled for firing, and of wool and lambs.

THE bill stated, that the plaintiff, for eleven years last past, hath been vicar of the vicarage of *Nortball*, in the county of *Middlesex*, and thereby was entitled to have all the tithes arising within the said parish, and in particular the tithes of *coppice wood*, as of poles, saplings, pollards, and standards, growing within the said parish, and not converted into timber, and also the tithes of calves, lambs, wool, pigeons, and all other *small tithes*; that the defendant, for the time aforesaid, possessed several parcels of coppice wood or underwood, standards, pollards, and saplings, and did cut down yearly eight acres of poles and standards, and coppice wood and poles, and did also occupy and possess land in the said parish, and kept and depastured yearly several sheep, and had fallen several lambs, and clipped and sheared the said sheep, from which he had quantities of wool; and also had a pigeon-house stocked with pigeons; and possessed gardens and orchards; the tithes of all which amounted to a large sum, and which the defendant doth deny to pay.

The defendant pleads, that timber trees, though used for fuel; and pollards above twenty years old; are not titheable;

The defendant answered, and confessed the plaintiff's title to all tithes and duties as the former vicars of the said parish have had; but said that he knew not or believed, that saplings, poles, or other trees, grown to timber, and of twenty years standing, are titheable, although used for fire wood; neither are pollards titheable whose growth is above the said age; and as to the said tithe poles, standards, and other woods cut down from the year 1660 to the winter of the year 1669, he said, that in that year all tithes demandable by the plaintiff from the defendant were paid and accepted by the plaintiff for all that was due and to be paid for any of the preceding years. But concerning the tithe wood since *Michaelmas* in the year 1669, he did then, as he had done in the preceding years, cause the tithe wood to be made up into faggots, upon the plaintiff's promise to pay the charge for faggoting; but the plaintiff had refused to perform his promise, wherefore the defendant hath omitted to faggot any more tithe wood for the plaintiff; that since the year 1669 the defendant had caused a full tenth part of such wood as was titheable to be set out for the plaintiff; but that he left the same on the defendant's ground, refusing to take it away because it was not made up into faggots and stack wood for him, which the defendant contends he is not bound to do. That he had not, in any of the said years, any sheep depastured a month together in *Nortball* parish, nor the number of seven lambs yeaned in a year, except in the year 1669, wherein he had fourteen lambs fallen; that he feedeth and clippeth his sheep in his grounds lying in other parishes, where he paid a composition for tithes; and that he hath clipped no sheep in *Nortball* but what he bought with

admits that he had sheep sheared, and lambs fallen in the parish.

with wool on their backs ready for shearing. He confessed, that he hath two dove-houses in the said parish; but whether tithe pigeons are payable, or not, he does not know.

BRABOURNE
against
EYRES.

THE COURT, upon reading the depositions in the cause, and after great debate, declared, that the defendant ought to have stacked and faggoted the wood which he set out for the tithes; and that the plaintiff ought to be relieved for his tithes for the years in which the defendant did not set them out.

The Court of o.
pinion, that the
defendant ought
to have stacked
and faggotted
the wood,

And in respect the defendant had, and still possessed, four hundred acres of land in the parish of *Northall*, and only seven acres in the parish of *Greenford*,

IT IS FURTHER ORDERED, that the defendant shall pay to the plaintiff tithe of all the wool and lambs proved to be shorn and fallen in either of the said parishes, according to the rates and values they are proved to be worth, deducting and abating out of the same to the said defendant the tithe wool and lamb of so many sheep as the said seven acres in *Greenford* could yearly keep and maintain with feeding.

and to pay for
his wool and
lambs.

EDWARD TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

WILMOT, Clerk, *against* THE ATTORNEY GENERAL and Others.

MICH. TERM,
24. CAR. 2.

Worcestershire, 3d December 1672.

THE plaintiff, as vicar of the parish of *Holycrofs*, in *Parshore*, in the county of *Worcester*, exhibited his bill, stating, that he, for seventeen years past, had been vicar of the said parish, and was thereby entitled to all the pensions, profits, and stipends belonging to the vicar of the said church; that the rectory of that church was formerly appropriated to the late monastery of *Parshore*, and parcel of the possessions thereof at the dissolution of monasteries by HENRY THE EIGHTH; that out of the rectory, on the impropriation thereof, there was agreed to be paid to the curate or vicar the yearly pension of six pounds for his stipend, and two pounds, thirteen shillings, and fourpence, yearly, out of the said rectory, for bread and wine to be spent in the said church and chapel; that the said rectory, on the dissolution of monasteries, came to KING HENRY THE EIGHTH, and by mesne descent to KING JAMES, who, by letters patent of the twenty-second of *September*, in the eleventh year of his reign, granted the same to *F. Morris* and *F. Phillips*, and their heirs; that their estates in the premises, except a portion of tithe in *Chevington*, within the said parish, came, about twenty years since,

The vicar of the
parish of *Holy-
crofs*, in the coun-
ty of *Worcester*, is
entitled to a
yearly pension
of 6l. for his sti-
pend, and of 2l.
13s. 4d. for sa-
cramental bread,
and wine, out of
the land former-
ly belonging to
the monastery of
Parshore, in the
said county.

to

WILMOT
against
THE
ATTORNEY
GENERAL
AND OTHERS

to the defendant *T. Turvey*, who became seised of the said rectory, and took the profits thereof; that the defendant *W. Adams*, for twenty years last past, hath been seised of the said portion of tithes in *Chevington*; and that they, for their respective parts of the said impropriation, ought to pay the said stipends to the plaintiff.

The defendants confess the plaintiff's title to the vicarage, but deny that the rectory descended to KING JAMES; for that, from the dissolution until the twenty-third year of *Queen Elizabeth*, the said rectory was lodged in the crown; that the said queen, by letters patent dated the twenty-seventh of *October*, in the twenty-third year of her reign, granted to *E. Downing* and *P. Aston*, and their heirs, in fee-farm, all the tithes growing in *Chevington*, in the parish of *Holycrofs*; all tithe renewing in *Walcott* and *Broughton*; and a portion of tithes yearly renewing in *Parfbore*, to the rectory of *Holycrofs* and *Saint Andrew* then belonging; that the said tithes in *Chevington*, *Walcott*, *Broughton*, and *Parfbore*, formerly belonged to the monastery of *Parfbore*, to hold of her said majesty, and her successors, as of her manor of *East Greenwich*, rendering to her majesty and her successors, for the said tithes in *Chevington*, &c. twenty shillings, and for the same premises in *Chevington*, &c. six pounds yearly to be paid to the curate of *Holycrofs* for his salary or stipend into the hands of the receiver general of the county of *Worcester*, and at the receipt of the exchequer at *Michaelmas* only yearly for all services; that the said *E. Downing* and *P. Aston* afterwards sold those tithes to *T. Crompton* and *F. Jackson*, and they sold the same to *T. Richardson* and his heirs; that all those said tithes (except those in *Chevington*) were vested afterwards in *E. Turvey*, the defendant's father; and about twelve years since they descended to the defendant, who hath constantly paid the six pounds *per annum*, as aforesaid, to the receiver general; that the owners of the tithes for the time being hath likewise paid the twenty shillings; but whether they were paid to the plaintiff by the receiver general they knew not; that they shall be willing, for the future, to obey the order of this court, as to the payment of the six pounds, to the plaintiff, or to the receiver general, as shall be thought fit.

THE COURT declared, that the pension or stipend of six pounds ought to be paid to the said plaintiff; and thereupon ORDERED, ADJUDGED, AND DECREED, that the sum of six pounds shall, for the future, be paid to the plaintiff and to the plaintiff's successors, vicars of the said parish of *Parfbore*. And this Court doth recommend it to THE LORD HIGH TREASURER OF ENGLAND that he will be pleased to grant a dormant warrant to empower the receiver of the county of *Worcester* to pay the said pension to the plaintiff, from time to time, as he shall receive the same.

EDW. TURNOR.

CHR. TURNOR.

TIM. LITTLETON.

WILKINSON

WILKINSON, Clerk, *against* FOOT, Bart.MICH. TERM,
24. CAR. 2.*Berkshire, 7th November 1672.*

THE plaintiff, as vicar of the parish-church of *Lawrence Waltham*, in the county of *Berks*, exhibited his bill, setting forth, that for ten years past he had been vicar of the said parish, and ought to have had and received all tithes which had been accustomed to be paid to the said vicar.

The vicar of the parish of *Lawrence Waltham*, in *Berkshire*, claims the tithes of certain lands called *Beenhams*, in kind.

The defendant confessed the plaintiff's title to all manner of *small tithes* happening within the said parish; but said, that the messuage and lands called *Beenhams*, out of which the plaintiff demands tithes *in kind*, had been held and enjoyed by all the owners and occupiers thereof, freed and exempted from the payment of any tithes in kind to the vicar or vicars of the said parish-church, the owners and occupiers of the said premises having always paid to the vicar three pounds, at the four quarterly payments, by way of a *modus*, and as a *composition* for all tithes in kind whatsoever for the said premises; that the plaintiff, during the time he had been vicar, had received the same accordingly, and the defendant was, and had been, willing to continue the payment thereof; but that the plaintiff, for two years past, had refused to accept the same; and the defendant, to gratify the plaintiff, had sometimes paid twenty shillings *per annum* over and above the three pounds *per annum*.

The defendant pleads a *modus* of 3l. a-year, payable quarterly, in lieu of all tithes in kind.

Upon reading a *terrier* made the thirty-first of *December* 1608, wherein no mention is made of any *modus* within the parish, an issue was directed to try, whether the occupier of the messuage and lands called *Beenhams* had, time out of mind, paid to the vicar the sum of three pounds, at four quarterly payments, as a composition for all tithes in kind whatsoever due for the said messuage and lands called *Beenhams*.

An issue directed to try the *modus*;

A trial was accordingly had, and a verdict was given for the defendant; but on the fourteenth of *November* 1693 a *new trial* was ordered to try the issue by a *special jury*, upon payment of full costs. In pursuance of the said order a new trial was had, and a verdict given for the plaintiff against the said pretended *modus*.

A verdict found against the pretended *modus*.

The cause now came on to be heard upon the equity reserved. 19th Nov. 1674.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff thirty-five pounds for and in lieu of the value of the tithes due from him for the messuage and lands called *Beenhams*, and all other his lands within the said parish, with fifty pounds for his costs of suit.

Tithes decreed in kind, with exemplary costs.

EDWARD WARD.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

HILARY TERM
24. CAR. 2.

KING *against* KNIGHT.

Lincolnshire, 3d February 1672.

No part of *Temple Heath*, in *Lincolnshire*, is within the parish of *Asbby de la Land*, in the said county.

THE bill stated, that the plaintiff was seised in fee of the rectory impropriate of *Asbby de la Land*, in the county of *Lincoln*, and thereby entitled to the tithes of wool and lamb, &c. within the said parish, and the titheable places thereof.

The defendants denied that they kept any sheep in the said parish, or had any lambs there yeaned, or any sheep there shorn in the years mentioned in the bill.

It appeared, that the sheep were depastured upon a parcel of ground called *Temple Heath*, claimed by the plaintiff to be within the said parish; and therefore an issue, "whether *Temple Heath*, or any, or what part thereof, lieth within the said parish of *Asbby de la Land*, or not?" was directed to be tried at the bar of the court of a jury of *Middlesex*; in which the plaintiff, after long debate, and examination of several ancient witnesses, and full evidence on both sides, became nonsuit.

THE COURT ordered the defendants to be dismissed.

EDWARD TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

HILARY TERM
24. CAR. 2.

WYNDHAM *against* HATCHER.

Somersetshire, 10th February 1672.

The plaintiff demands tithes in kind of *Westbarn Farm*, in the parish of *Wibam Frarcy*, in the county of *Somerset*.

THE cause coming on to be heard this day, it appeared, that the chief matter in difference was concerning the payment of tithe milk in kind in the parish of *Wibam Frarcy*, in the county of *Somerset*; and, the defendant having set forth an ancient composition, an issue was directed to try, whether, by custom time out of mind, the occupiers of a farm called *Westbarn Farm*, in the parish of *Wibam Frarcy*, have usually paid, or of right ought to pay, to the owners of the tithes of the said farm for the time being, in recompence and full satisfaction for tithe milk, the sum of threepence for every cow, and three halfpence for every heifer kept and depastured upon the said farm called *Westbarn Farm*.
A *modus* of three pence for every cow, in lieu of tithe milk, and three halfpence for every heifer, is pleaded, and found.

24th Feb. 1673.

A trial was had, and a verdict passed for the defendant.

The defendant, as to tithe milk, dismissed.

THE COURT therefore ordered, that the bill be dismissed as to tithe milk; and the other matters were referred to the auditor to take an account of the same.

PARSONS

PARSONS *against* NOBLE ; *et à Contra.*EASTER TERM
25. CAR 2.

Cumberland, 28th April 1673.

THE scope of the *first bill* was to be relieved upon a pretended ancient custom or manner of tithing of several lands lying within the rectory and parish of *Graystock*, in the county of *Cumberland*, whereby the several possessors and occupiers within the said rectory and parish have used to pay to the rector, or his farmer, yearly, for every ancient tenement, *three bushels of oats and one bushel of bigg*, in full satisfaction of all the tithes in kind of oats and bigg arising and growing within the said rectory ; and that every such bushel hath used to contain *twenty gallons*, and not less.

The rector of the parish of *Graystock* claims from the owner of every ancient tenement in the parish three bushels of oats and one bushel of bigg, in lieu of the tithe of oats and bigg, the bushel to contain 20 gallons.

The scope of the *cross bill* was, to settle a pretended custom within the said rectory of *Graystock*, whereby the several possessors and occupiers within the rectory have used to pay yearly to the rector, or his farmer, a certain quantity of *bigg and oats*, commonly called "*bushel tithe*," and a certain yearly sum of money, called "*pension money*," being answerable to the proportion of twelve pence for every bushel of bigg, and eight pence for every bushel of oats, in lieu of all tithes ; the bushel to contain *eight gallons*, according to the *Winchester measure* ; the peck proportionably to contain two gallons ; and the hoop, being the fourth part of a peck, to contain two quarts, and no more.

A cross bill is filed, stating, that this *bushel tithe* may be paid in *pension money*, at the rate of 12d. a bushel for bigg, and 8d. a bushel for oats ; the bushel to contain *eight gallons*.

To which several bills the respective defendants appeared and answered ; and the plaintiffs replied ; and, issue being joined, divers witnesses were examined in both causes.

The causes came on to be heard this day ; and upon opening the pleadings, and reading several depositions taken on behalf of the plaintiffs in the *cross cause* ; and upon long debate ;

IT WAS ORDERED BY THE COURT, that the matter be referred to a trial at law ; the issue to be, whether *twenty gallons* or *sixteen gallons* to the bushel of oats and bigg have been accustomed to be paid yearly by the several possessors and occupiers of the tenements in the bill mentioned, within the rectory of *Graystock*, to the rector or farmer of the said rectory.

An issue directed to try, whether the bushel should consist of *twenty*, or of *sixteen gallons*, and a verdict for the defendant.

The causes, being continued in the paper of causes, came on to be further heard upon the eighteenth of *November* last ; and upon reading the said order, and the verdict thereupon,

But a new trial was granted on a new issue.

IT WAS THEN ORDERED, that a new trial should be had, to be tried before a jury from the county of *Lancaster*, upon the said issue. But on the nineteenth of *February* it was ordered, by and with the consent of all parties, that the causes should be set down to be further heard this twenty-fourth of *February* 1673 ; and

24th Feb. 1673.

PARSONS
against
NOBLE;
et c. Contra.

Whether the occupier of ancient tenements within the villages of *Berrier, Penruddock, Hutton, and Johnby*, ought to pay their *busbel* tithe, at the rate of *twenty gallons*, or *sixteen gallons*, to the bushel.

that, if the Court should think fit to alter the issue, the defendants should pay costs for this day's attendance; but on the contrary the plaintiff should pay costs (a); and the causes now coming on to be further heard, a new issue was ordered to be drawn up in the following form: "That whereas there were several discourses moved and had between the plaintiffs and the defendants concerning a certain manner of tithing of oats and bigg, commonly called *busbel* tithe, within the villages of *Berrier, Penruddock, Hutton, and Johnby*, within the rectory of *Graystock*; and upon that discourse the plaintiffs affirmed to the defendants, that the several occupiers and possessors of every *ancient tenement* within the said villages, time out of mind, have paid, and ought to pay, *twenty gallons* to the bushel, and no less; and the defendants affirmed to the plaintiffs, that they have paid, and time out of mind ought but to pay, *sixteen gallons*, and no more: in consideration, therefore, of five shillings to the defendants by the plaintiffs in hand paid, the said defendants upon themselves did assume, and to the plaintiffs then and there faithfully promise, that for every gallon the said bushel, time out of mind, has contained more than *sixteen gallons*, they would pay to the plaintiffs twelve-pence upon request." The said action to be tried at the assizes to be held for the county of *Lancaster*; and the verdict formerly obtained upon the first issue to be given in evidence at the trial now directed.

22d Nov. 1675.

A verdict that the bushel ought to contain only *sixteen gallons*.

The trial was accordingly had; and a verdict found, that the bushel ought to contain *sixteen gallons*, and no more.

But another trial is ordered in a different county,

The cause came on to be further heard on the twenty-eighth day of *November* 1674; when it was ordered, that a new trial should be had at the next assizes for the county of *Westmoreland* upon the last issue (which said trial should be final), upon paying taxed costs.

In which the former verdict is confirmed.

The cause came on again; and the defendant's counsel informing the Court, that the defendants had obtained another verdict upon the last issue, which was to be final to the plaintiffs in the first cause, upon reading the several orders and the *posseas*,

The payment of the said *busbel* tithe decreed accordingly.

IT IS ORDERED BY THE COURT, that the defendants *Noble* and others shall pay to the plaintiffs *Parsons* and *Robson* the oats and bigg commonly called *busbel* tithe, which are in arrear and due to the said plaintiffs from the time the same were detained until the twenty-fifth of *April* 1673; to be paid in money according to such price as oats and bigg were sold for in the several years as they respectively grew due, by a bushel contain-

(a) NOTE, Costs were afterwards ordered accordingly.

ing *sixteen gallons*, and no more, according to the verdicts upon the several issues directed out of this court; and that the said measure of *sixteen gallons* to the bushel shall be the measure between the plaintiffs and defendants for the time to come. The costs of the two last issues to be taxed, and deducted out of the *bushel tithes* already due. The costs expended in this court to be spared on both sides. The auditor of the said county to cast up the values of the oats and blgg remaining due, and report the same.

Passons
against
Noble;
et contra.

TIM. LITTLETON.
VERE BERTIE.

RUDGELEY, Widow, *against* WINSTANLEY and Others. EASTER TERM
25. CAR. 2.

Leicestershire, 15th May 1673.

THE plaintiff, as relict and executrix of *Simon Rudgeley*, deceased, exhibited her bill, setting forth, that *J. Dixon*, clerk, was lawful rector of the parish church of *Glenfield*, in the county of *Leicester*; and that, by reason thereof, he ought to have all tithes, both great and small, together with all the rents, issues, and profits of all the glebe lands to the said rectory belonging; that he, by his indenture dated the tenth of *April*, in the seventeenth year of his majesty's reign, did demise to the said *Simon Rudgeley*, his executors, administrators, and assigns, all the glebe lands belonging to the rectory of *Glenfield*, with all tithes of herbage, wool, and lamb, and all other small tithes growing therein, and in the titheable places thereof, for fifteen years "if *J. Dixon* should so long live;" that *Simon Rudgeley*, about five years ago, died, having made his will, and appointed the plaintiff his executrix, who accordingly proved the same; that by virtue thereof the plaintiff is become intitled to all the glebe lands and tithes which have been due since her husband's death, and to all the arrears of the profits of the said glebe lands which were unpaid to her husband.

The plaintiff, as executrix of her husband, claims the tithes of *Glenfield*, in *Leicestershire*, by virtue of a lease thereof made by the rector to her husband in the year 1666.

The defendant *Winstanley* denied, that he knew of the said lease; and said, that *Sir Henry Hastings*, knight, was seised in fee, or of some other estate of inheritance, of divers messuages and lands within the towns, hamlets, and parishes of *Glenfield*, *Kirby Muckles*, *Bramston*, and the late disafforested forest or chase of *Leicester*; that by agreement, dated the first of *October* 1632, made betwixt *J. Dixon* and *Sir H. Hastings*, it was agreed that he, *Sir Henry*, should pay yearly to *J. Dixon*, while he should continue rector of the said church, thirty-five pounds for a rate tithe, in full satisfaction of all tithes issuing out of the said lands, and for all glebe lands; that a great part of the said *Sir Henry's* lands are since come to him; and that twenty pounds *per annum* is his full proportionable

The defendants deny the having had any notice of the lease, and say, that until *Michaelmas* 1669 they paid their tithes to the rector.

RUSSELEY proportionable part of the said thirty-five pounds *per annum*;
against that for some years last past he hath paid his proportionable part
WINSTANLEY of the composition to *J. Dixon*, to whom he supposed it did be-
AND OTHERS. long, having no notice of the said lease.

All the other defendants denied any knowledge of the lease; and said, they held several lands under the defendant *Winstanley*, and that he was to indemnify them from the payment of tithes.

Upon opening the pleadings, and reading several depositions, and the said agreement in the year 1632,

The tithes sub-
 sequent to *Michaelmas* 1669
 decreed.

IT IS ORDERED BY THE COURT, that no further examination shall be had or made as concerning the time when the said defendants, or any of them, had notice of the lease to the plaintiff's husband; and that the defendants shall be, and are, hereby discharged of and from all arrears for tithes pretended to be due to the said plaintiff, by colour of the said lease, for and unto the feast of *Saint Michael* 1669, they having paid the same to the said *J. Dixon*, the then present incumbent, without any notice of the said lease. AND IT IS FURTHER ORDERED, that it be referred to the auditor of the county to state the whole account, what is due from the said defendants to the plaintiff for tithes for their several lands from *Michaelmas* 1669; and that the plaintiff shall have liberty to make the executor of *J. Dixon* defendant, if she thinks fit (a).

(a) In Michaelmas Term, 25. Car. 2. the widow *Rudgeley* filed a bill in this court against *Wollaston*, as occupier of glebe lands, &c. within the parish of *Glenfield*, for an account of his tithes. The defendant denied all knowledge that *J. Dixon* had demised the glebe lands, and the tithe of corn, grain, herbage, wool, and lamb, to the said *S. Rudgeley*; and said, that he had, about four years before, made an agreement with *J. Dixon*, the rector, to pay certain sums of money

in lieu of tithes, which he had accordingly paid, except for about eighteen months. An issue was directed to try, whether *Wollaston* had any notice of the said lease; and on its being found that he had notice in the month of *June* or *July* 1666, THE COURT ordered him to pay the yearly composition to the plaintiff, according to the agreement made with the rector *J. Dixon*, from the time notice was given to him of the said lease.—MS.

EASTER TERM,
 25. CAR. 2.

LORD, Clerk, *against* POOKE.

Suffex, 17th April 1673.

The plaintiff THE plaintiff, as vicar of *Salehurst*, in the county of *Suffex*,
 claims tithes of claimed all manner of tithes (except the tithes of corn and
 the glebe lands grain) due from the defendant for certain messuages and lands
 of the parsonage of *Salehurst*, in which he held in the parish.
 the occupation of the defendant;

but it appearing The defendant stated, that, for two years, he used in *Salehurst*
 that the lands a messuage, two gardens, two orchards, and several acres of arable,
 were parcel of the monastery of *Robertbridge*, a convent of the *Cistercian* order of monks,

meadow,

meadow, pasture, and brook land, called, "The Manor and Parsonage-House and Lands of *Salehurst*;" that the same hath always been esteemed part of the late dissolved monastery or abbey of *Robertbridge*, and the glebe of the parsonage of *Salehurst*; that the abbot and convent of the said abbey were of the *Cistercian order*, who had privilege and immunity to be discharged of all tithes of their own lands in their own hands, and at their own costs manured; that the same are so come, freed, and discharged from the payment of tithes, to the defendant and his heirs, who himself occupieth and manureth the same, and therefore ought, neither by law or equity, to be compelled to pay any tithes to the plaintiff for the same.

LORD
against
POOR.

It appeared to the Court, from the depositions and certain records produced by the defendant, that the said messuage, lands, and premises, were part of the said late dissolved monastery or abbey of *Robertbridge*, and are the glebe lands of the parsonage of *Salehurst* aforesaid; that the said abbey was of the *Cistercian order*, and thereby exempted from payment of tithes (a); and therefore IT IS ORDERED BY THE COURT, that the defendant do stand dismissed of and from the said bill, and all and singular the matters and things therein contained, without costs.

the defendant
is discharged
from the pay-
ment of the
tithes thereof.

* * * *

THE PLAINTIFF'S COUNSEL then insisted, that a *customary payment* of twenty shillings a-year had been constantly paid by the defendant and his ancestors to the plaintiff and his predecessors, in lieu of tithes for the premises.

The plaintiff
further insists on
20s. a-year as a
customary pay-
ment in lieu of
tithes.

THE COURT adjudging the same not to be due to the plaintiff, or payable to him as tithes for the said premises, or as a customary payment in lieu of tithes, IT IS FURTHER ORDERED, that upon the defendant's submission to the request of the Court (for that the plaintiff and defendant were near relations to one another), he do give and pay to the plaintiff during his life, and no longer, twenty shillings *per annum*, only as a *gratuity*, but not as tithes, or a duty or customary payment in lieu of tithes; and the plaintiff shall give a receipt acknowledging the same as a gratuity in pursuance of this order; and that the payment of the said twenty shillings *per annum* shall not be drawn into example, so as to create any right in the plaintiff or his successors to the said twenty shillings *per annum*; for the Court doth declare, that there is no such payment of right due to the plaintiff, as vicar of *Salehurst*, in lieu of tithes for the said premises, or any tithes or customary payment for the same, as by the plaintiff's counsel was insisted on as aforesaid.

The Court ad-
judge no such
payment to be
due for tithes;
but recommend
the continuance
of it as a *grati-*

EDWARD TURNOR.
TIM. LITTLETON.

(a) See *Stravely v. Ullithorne*, ante, page 24. ; *Wilson v. Redman*, ante, page 62. ; *Lord v. Turk*, Bunb. 102.

TRIN. TERM,
25. CAR. 2.

GURDON, Clerk, *against* SELL.

Essex, 12th June 1673.

The rector of *Woodham Ferryes*, in *Essex*, preferred his bill for tithes of thirty acres of *underwood* within the said parish, whereof the said defendant became farmer or purchaser, and made the same into faggots, scovell, and stack-wood, and carried the same away without setting out the tithes thereof.

The defendant sets up a *modus* of 10s. a year in the hamlet of *Bicknacre*, in lieu of all tithe of land and wood. The defendant said, that in the year 1670 he purchased of Sir G. Barrington seventeen acres of underwood growing in *Woodham Ferryes* and *Danbury*, sixteen acres and a half whereof is in *Woodham Ferryes* and the rest is in *Danbury*; that the said Sir G. Barrington is lord of the manor or priory of *Bicknacre*, and those whose estates he hath therein have, by ancient custom, prescription, or composition, paid to the rector of *Woodham Ferryes*, as a *modus* or rate for tithes, ten shillings, in full satisfaction of all tithes for lands and woods holden of the said priory or manor, and lying within the hamlet; that the sixteen acres and a half of the said woods are parcel of the demesne, and lie in the hamlet of *Bicknacre*, in *Woodham Ferryes*; and that the said Sir G. Barrington, for the two years last past, paid, or was ready to pay, to the plaintiff, ten shillings, in full satisfaction of the tithes,

An issue directed to try the *modus*. An issue was directed to try, whether the lords, owners, or occupiers of the manor or priory of *Bicknacre*, in the county of *Essex*, for the time being, of ancient custom used, time whereof the memory of man is not to the contrary, have paid yearly, and every year, to the rector of *Woodham Ferryes*, the sum of ten shillings, in full satisfaction of all tithes for all the lands and woods parcel of the said priory or manor, and lying in the hamlet of *Bicknacre*, in the parish of *Woodham Ferryes*, or not? Both parties to admit all circumstances, and to insist only upon the matter aforesaid, whether there be such a *modus*, or not?

27th Oct. 1673. A verdict establishing the *modus*. The trial was had, and a verdict given for the defendant therein.

The defendant dismissed. THE COURT ordered, that the defendant shall be dismissed this court of and from the said bill and the matters and things therein contained.

EDWARD TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

ALDWORTH

ALDWORTH *against* NEW COLLEGE in OXFORD, and Others (a) ; *et è Contra*. TRIN. TERM,
25. CAR. 2.

Buckinghamshire, 12th June 1673.

THE scope of the bill was to be relieved for the *small tithes* arising out of a portion of tithes called *Longville Portion*, within the rectory of *Wotton Underwood*, of which rectory the plaintiff is farmer under the *Archbishop of Canterbury*.

The plaintiff, *Aldworth*, as lessee of the archbishop of *Canterbury*, claims the *small tithes* of *Longville Portion*, in the parish of *Wotton Underwood*.

The defendants answered ; and the plaintiff replied.

The defendants *Heyburne* and *Keteridge* preferred their bill of interpleader against the plaintiff *Aldworth* and the defendant *Ball*, tenant, under the college of the said portion, who appeared and answered. The plaintiffs replied ; and witnesses were examined on both sides.

The defendants *Heyburne* and *Keteridge* interplead against *Aldworth* and *Ball*, the lessee of the College.

Upon opening both the bills, and all the answers, the Court, in order to try the right and title of the *small tithes* within the said portion, ordered, that the plaintiff *Aldworth* shall forthwith bring his action against the College ; and that the issue shall be, whether the *small tithes* arising and growing due within the portion called *Longville Portion*, within the said rectory of *Wotton Underwood*, do rightfully belong to the plaintiff, or to the said college, or their tenant or tenants ; to be tried at the bar of this court by a *Middlesex jury* ; both parties to admit all circumstances, and to insist only upon this, whether the said *small tithes* do belong to the plaintiff, or not ? the defendants to produce all terriers, rolls, books, or papers concerning the said *Longville Portion*, which remain in their hands, and the college to give to the plaintiff a copy of the inquisition taken at *Stony Stratford*, in the county of *Bucks*, on *Friday*, in the eighteenth year of *Edward the Second*, mentioned in the answer, and they are to procure a sight of the ancient deeds of purchase, and the evidences of and concerning the said rectory of the said archbishop ; and that all suits in the ecclesiastical court against the tenants of the said lands for the said *small tithes* shall be stayed until the determination of these causes, or the Court shall give other order herein ; and the equity of the cause to be reserved to this court.

Aldworth directed to bring his action against the College, to try whether the *tithes* belong to the archbishop, or to the College.

The action was accordingly tried at the bar of this court, and a verdict had for the plaintiff, that he ought to receive the *small tithes* in question.

2d June 1674.
A verdict found in favour of the archbishop's right.

(a) See ante, *Ball v. Keyburne and Others*, 10th May 1669, 21. Car. 2. page 99.

ALDWORTH
against
NEW COLLEGE
IN OXFORD,
AND OTHERS.

Heyburne and
Keteridge order-
ed to pay their
tithes to **Ald-**
worth, and an injunction granted against **Ball**.

IT WAS ORDERED BY THE COURT, that the plaintiffs in the *cross cause* shall, from time to time, as their small tithes shall grow due, pay the same to the defendant *Aldworth*; and that neither the defendant *Ball*, nor any under whom he claims, shall proceed against the plaintiffs in *the archdeacon's court* or the arches for their small tithes within the said portion called *Longville Portion*, within the parish of *Wotton Underwood* aforesaid.

And as **Heyburne**
and **Keteridge**
had paid the
tithes to **Ball**,

The causes coming on for a further hearing, forasmuch as **T. Heyburne** and **G. Keteridge** have paid their small tithes, or several sums of money in lieu thereof, for several years, to **W. Ball**, and, since the suit hath commenced, have brought the same into court, amounting to thirteen pounds,

Ball is ordered
to pay the same
over to **Ald-**
worth,

IT IS ORDERED BY THE COURT, that the said **W. Ball** shall account for and satisfy to the plaintiff the value of all the small tithes by him received of them, grown due within the said portion: and it is referred to the auditor of the said county to take an account of the same.

and to pay **Ald-**
worth the tithes
in future,

AND IT IS FURTHER ORDERED BY THE COURT, that the deputy-remembrancer do pay out of court to the said **Aldworth** the said sum of thirteen pounds; and for the future, the said **Heyburne** and **Keteridge** shall pay their small tithes, for all the land within the portion holden by them, to the plaintiff **Aldworth** during the time he shall continue farmer of the said rectory; and they shall be protected for so doing by the decree of this court against the warden, fellows, and scholars, and the said **W. Ball**, and all claiming from, by, or under them.

and **Aldworth**
quieted in the
possession of the
said tithes.

AND IT IS FURTHER ORDERED, that an injunction be awarded for the quieting of the possession of the said plaintiff **Aldworth** of and in the small tithes of the lands within the said portion called *Longville Portion*, so long as he shall be farmer of the said rectory of *Wotton Underwood*, against the said warden, &c. and **W. Ball**, and all claiming under them (a).

EDW. TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDWARD THURLAND.

(a) See ante, page 99. the case of *Ball v. Heyburne and Others*, 10th May 1669, 21. Car. 2. where *Ball*, as lessee of *New College*, in *Oxford*, claimed the tithes of *Longville Portion*, and, on an issue directed to try a variety of *moduses*

which the defendants set up, a verdict was found against the defendants, and tithes of certain lands which they held within *Longville Portion*, were decreed to be paid to *Ball* in kind.

SEWELL *against* THE DEAN AND CHAPTER OF EASTER TERM
CARLISLE. 26. CAR. 2.

Cumberland, 25th May 1674.

THE scope of the bill being to settle an ancient custom or manner of tithing within several townships, the Court directed the following issue to be tried in *Westmoreland*, viz. that whereas there were several discourses moved and had between the plaintiffs and the defendants concerning an ancient custom or manner of tithing of haver or oatmeal for and in lieu of the tithes of all corn, grain, and hay, within the townships of *Carlleton* and *Wray*; and for and in lieu of all corn and grain within the townships of *Blackball*, *Blackball Wood*, and *the Monk*, within the several parishes of *Saint Cuthbert's*, and *Saint Mary Carlisle*, and *Hayton*; and upon that discourse the defendants affirmed to the plaintiffs, that they, and their ancestors within the several townships, have, time out of mind, paid, and ought to pay, their haver or oatmeal in lieu of their tithes in question, by a bushel or measure containing thirteen gallons, two quarts, and one pint to the bushel, and no less; and the plaintiffs affirmed to the defendants that they have paid, and ought to pay, their haver or oatmeal in question, in lieu of their tithes, by a brass measure or bushel, containing eight gallons to the bushel, and no more; and whereas there were several discourses moved and had between the said plaintiffs and defendants concerning at or within what time their haver and oatmeal ought to be paid; and upon that discourse the plaintiffs affirmed to the defendants that they and their ancestors, time out of mind, have paid and ought to pay their said haver or oatmeal at any time between *Martinmas* and *Lammas* yearly; and the defendants affirmed to the plaintiffs, that they and their ancestors, time out of mind, have paid, and ought to pay, their said haver or oatmeal at *Lady Day*, or between that time and the *Lammas Day* following, yearly, and not before.

A verdict passed for the defendants upon THE FIRST ISSUE directed, that the said bushel or measure ought to contain thirteen gallons, two quarts, and one pint; and upon THE SECOND ISSUE, as to the time of paying the haver and oatmeal by the said plaintiffs, a verdict was given for the plaintiffs,

THE COURT, therefore, by consent of all parties, ordered, that the plaintiffs shall, for the time to come, pay to the defendant, the lessee, to the dean and chapter of *Carlisle*, during the term of his lease, and after the expiration thereof, to the said dean and chapter for the time being, their farmers or agents, their haver or oatmeal, in lieu of their tithes, by a bushel or measure containing thirteen gallons, two quarts, and one pint, and no less, according to the said verdict, and that the said plaintiffs shall forthwith pay to the said lessee the value of their said tithes of

The manner in which the *modus* in lieu of the tithes of corn, grain, and hay, in certain townships in the county of *Cumberland* shall be paid.

14th Nov. 1674.

SEWELL
against
THE DEAN
AND CHAPTER
OF CARLISLE.

haver and oatmeal in arrear, according to the said measure, and at the same price that haver or oatmeal was usually sold for at the respective times the same became due. AND IT IS FURTHER ORDERED BY THE COURT, that all payments that shall be made by the said plaintiffs for the time to come for their haver or oatmeal, shall be made at the abbey of *Carlisle* at any time between the eleventh day of *November* and the first day of *August* following, yearly, according to the said verdict. And forasmuch as two issues have been directed to be tried, and, upon trial of the same, one hath been found for the defendants and the other for the plaintiffs, costs are to be spared on either side.

EDWARD TURNOR.
CH. TURNOR.
TIM. LITTLETON.
EDWARD THURLAND.

TRIN. TERM,
26. CAR. 2.

CONANT, Clerk, against GREAVES, Bart.

Sussex, 6th July 1674.

THE owner of the forest of *Saint Leonard's*, in the county of *Sussex*, shall pay a buck and a doe yearly to the rector of the parish of *Beeding*, in the said county, in lieu of the tithes of the said forest. THE bill stated, that the plaintiff *Conant* hath been lawful rector of *Beeding*, in the county of *Sussex*, for five years past, and is entitled to all the tithes within the said parish that have been accustomed to be paid; that the defendant is owner of certain lands called *the Forest of Saint Leonard's* within the said parish, and ought to pay all the great and small tithes arising therein to the rector, or the best buck and doe yearly, at every season, in lieu of the tithes for the said forest; that the defendant, for five years past, hath refused to pay any tithes for the said forest; that the plaintiff *Turnor*, as tenant to the said rector, ought to have the best buck and doe yearly, at every season, paid to him in specie, the same being worth ten pounds *per annum*, in full satisfaction for the tithes arising yearly out of the said forest.

The tithes cannot be withheld for non-payment of the keeper's fees,

The defendant confessed, that he is owner of *the Forest of Saint Leonard's*; and that before and since the plaintiff was rector of *Beeding*, he hath given orders to his keepers or tenants of the said forest that they should kill *the tithe deer* when demanded; and that the reason they have not, for two years past, been paid was, that the plaintiff refused to pay the keeper's fees.

THE COURT ordered, that the defendant shall forthwith pay to the plaintiff *Turnor* the several bucks and does in arrear in specie, due and owing, as other bucks and does are usually paid, upon warrants.

25th Feb. 1674.

AND IT IS THIS DAY FURTHER ORDERED, that the defendant shall, for the future, pay and deliver to the plaintiff *Turnor*, the lessee, during the term of his lease, and after the expiration

to the rector, a buck and doe yearly of forest deer, in specie, in lieu of the tithes of the said forest, at the respective seasons, for the time to come, as other bucks and does are usually paid and delivered, upon warrants; without costs.

CONANT
against
GREAVES.

EDW. TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

HILL, Clerk, *against* PRIMATE, Clerk.

TRIN. TERM,
26. CAR. 2.

Lincolnshire, 16th July 1674.

THE plaintiff, as executor of *John Hill*, clerk, preferred a bill, stating, that the said *J. Hill*, in the year 1640, was instituted into the prebend of *North Grantham*, founded in the cathedral church of *Salisbury*, and continued there till his death in the year 1662, and was entitled to all rents and profits belonging to the said prebend; that there is due to the prebendary of the said prebend for the time being, at *Michaelmas*, yearly, an annual pension of two pounds, thirteen shillings and fourpence, issuing out of the rectory of *Denton*, in *Lincolnshire*; and that the said pension, time out of mind, hath been paid to the former prebendaries; that about the twenty-fourth of *April* 1662, the said *Hill* made his will, and appointed the plaintiff his executor; that the said *Hill* died soon after, and that he proved the will, and thereby became entitled to all arrears of the said pension for twenty-two years past; that the defendant was during the said time, and still is, rector of *Denton*, and ought to have paid the same yearly.

A yearly pension of 2l. 13s. 4d. is due to the prebendary of *North Grantham*, in *Lincolnshire*, from the rector of *Denton*, in the same county.

See another cause, *Hill v. Primate*, page 120.

The defendant denied that any such pension as two pounds, thirteen shillings, and fourpence, was or is due from him out of the rectory of *Denton*.

Now upon hearing counsel on both sides, and reading the depositions, and a record in the first fruits office, whereby it appeared, that the said pension is charged upon the prebendary of the said prebend, and allowed to the rector of the said rectory of *Denton*; and reading the said will, whereby it appeared the plaintiff is executor;

IT IS ORDERED BY THE COURT, that the defendant shall forthwith pay to the plaintiff fifty-eight pounds, thirteen shillings, and fourpence, for twenty-two years pension due and in arrear to the said *J. Hill* at the time of his death, as prebendary of the said prebend of *North Grantham*.

EDWARD TURNOR.
CHR. TURNOR.

WICKHAM

MICH. TERM,
26. CAR. 2.

WICKHAM, Clerk, *against* GREEN.

Suffolk, 19th November 1674.

The rector of *Wilby*, in *Suffolk*, claims tithe in kind for the agistment of cattle for sale, and not reared for the use of the dairy. THE bill stated, that for ten years last past the plaintiff had been lawful rector and incumbent of the parish of *Wilby*, in the county of *Suffolk*; and that the defendants, for several years, had been proprietors, occupiers, and owners of several pastures and feeding-grounds within the said parish, which they did, yearly and every year, feed and depasture with steers, heifers, cows, and other cattle not reared, brought up, or returned for or out of the dairy, to be there fattened and sold, which were by them fattened and sold and returned accordingly, the herbage and tithes whereof, in every of the said years, ought to have been paid to the plaintiff.

The defendant sets up a *modus*; and an issue is directed to try, "whether there is a *modus*, that for every beast bought in to be fattened there should be paid 2d. a-year."

The defendant stated a custom of tithing within that parish.

THE COURT directed an issue to try, "Whether there be a custom within the parish of *Wilby* that, time whereof the memory of man is not to the contrary, the occupiers of lands within the said parish ought to pay to the rector of the said parish for the time being twopence by the year, and no more, for the year's feed of every beast, steer, or bullock, bought in to be fattened within the said parish, for and in lieu, and in full satisfaction of the tithes of the herbage of the said beasts, steers, or bullocks."

The venue to be laid in *Saint Edmund's Bury*.

To be tried by a *special jury* of the freeholders dwelling within the franchise of *Saint Edmund's Bury*, and not in the guildable of the said county.

At which trial the defendants obtain a verdict; but the Judge being dissatisfied therewith, a *new trial* is granted;

A trial was accordingly had, and a verdict found in favour of the defendants; but on the twenty-first of *April* 1675, the plaintiff moved the Court for a *new trial*; and THE LORD CHIEF BARON, before whom the said verdict passed, declaring in court his great dissatisfaction of the same, a new trial was granted, upon the fifteenth of *May*, on the said issue, upon payment of costs of the former trial.

and the former verdict ordered not to be given in evidence.

Upon the thirtieth of *June* following, the plaintiff moved the Court, that the said verdict in favour of the said defendants might not be given in evidence at the new trial, inasmuch as it appeared to THE LORD CHIEF BARON that it was given contrary to evidence; and the Court accordingly ordered, that the *posse* of the said verdict should be stayed in the hands of the clerk of the assize.

On which new trial a verdict is given for the plaintiff on satisfactory evidence.

A new trial was had; and after full evidence given on both sides, a verdict passed for the plaintiff; with which THE LORD CHIEF BARON, both at the trial and in court, declared himself fully satisfied.

THE

THE COURT, upon shewing forth the *posse* of the said verdict, and being satisfied that there is no such *modus* in the said parish for depasturing and feeding of cattle, as by the defendant's answer is set forth, DECLARED, that tithes in kind ought to be paid for the same, according to the value of the herbage; and DECREED the same accordingly.

WICKHAM
against
GREEN.

And the Court being satisfied that no such *modus* existed, tithes are decreed in kind.

EDWARD TURNOR.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

WICKHAM, Clerk, *against* THROWER.

MICH. TERM,
26. CAR. 2.

Suffolk, 19th November 1674.

THE bill stated, that the plaintiff is, and for ten years past hath been, lawful rector and incumbent of the parish of *Wilby*, and for all that time had been entitled to, and ought to have had and enjoyed the tithes, and customary duties and payments for tithes, within that parish; that the defendants, for one year, were proprietors and occupiers of certain farms and lands, and kept and depastured thereon cows for the dairy, and had calves therefrom fallen; that within that parish there are, and had been, time out of mind, the customs and manners of tithing following:

The rector of *Wilby*, in *Suffolk* claims tithes in the following manner:

FIRST, For every calf there, if under the number of ten, the seventh calf for tithe, the parishioner and occupier to be allowed twopence for every calf there wanted from the number of seven to the number of ten calves.

The seventh calf, if under ten, allowing 2d. for all wanting from seven to ten.

SECONDLY, That if there fall above ten calves, for every seventh calf above that number, the seventh calf, with such allowance to make up such seven calves to the number of ten; and in like manner for a greater number of calves fallen, the same being titheable, one of every tenth calf fallen, without such allowance.

The seventh calf for every calf above ten.

THIRDLY, That the said tithe calf and calves were and are payable to the parson there, and to be delivered at the parsonage-house, every calf that doth fall before our *Lady Day* yearly at the age of seven weeks; and every calf yearly fallen after the said feast at the age of five weeks.

The said tithe calves to be delivered at the parsonage.

FOURTHLY, That every parishioner and occupier of lands there, for and in lieu of lactage and tithe milk, have used to pay and deliver thirteen cheeses yearly, each cheese to be made of all the milk of the evening and of the morning following, of the evening flett and of the morning unflett, as it cometh from the cow; the first cheese of the said thirteen cheeses to be made upon the third day of *May* yearly, and in like manner upon every tenth day following yearly; seven of the said thirteen cheeses to be

Thirteen cheeses a year, in lieu of tithe milk.

WICKHAM
against
THROWER.

be delivered at the church or parsonage-house of *Wilby* upon *Saint Mary Magdalen's Day*, and the remaining six to be delivered at the same place upon *Holy Rood Day* yearly. That the defendants refused to set forth what calves they had fallen in that year, or to make satisfaction for the same; and for their tithe cheeses do set forth other customs in prejudice of the plaintiff.

The defendants
confess the *modus*
as stated, except
that the calves
are not to be
sent to the par-
sonage,

and as to the
milk of which
the cheeses are
to be made.

The defendant *Thrower* answered, and confessed, that the plaintiff was rector for the time in the bill mentioned, and intitled to all the customary dues and payments for tithes there; that he was proprietor and occupier of the lands, and a farm, whereon he kept and depastured several cows, from which he had calves; that he believed there had been such ancient customs and manners for tithing of calves and milk, as in the bill set forth, except only that the tithe of calves belonging to the parson are not to be sent home to the parsonage-house by the occupier or proprietor, but to be delivered, at the time appointed by the custom, at the cribb of the parishioner, whither the parson ought to send for the same; and also except that the thirteen cheeses are to be made of the milk of the day in the morning flett and in the evening next following unflett, and not of the evening flett and of the morning unflett, as in the bill is mentioned; that there is but one tithe calf due from him, which he kept for the plaintiff, and gave him notice of the same; and that his tithe cheeses for that year were delivered, part in the chancel, and part to the plaintiff's wife in the church-porch; that the cows were not milked at unusual hours, but at such times as they are usually milked when a cheese is to be made for themselves, or at night.

The defendant *Clowting* put in the same answer.

The question
between the par-
ties being, whe-
ther the tithe
calves shall be
delivered at the
parsonage or at
the cribb;

and whether the
cheeses should
be made of e-
vening's and
morning's milk,
or of the morn-
ing and evening
milk made pre-
ceding or on the

Upon opening the bill and answers, and hearing counsel, and reading the deposition of *Dr. Ball* taken in the cause, and on debate of the matter, the difference between the said parties touching the tithe calf appeared to be, that the plaintiff required that the same should be brought to the parsonage-house, whereas the defendants alledged that the same should be delivered at the crib; and that the difference about the tithe for cheeses was, that the plaintiff alledged that the same should be made of the evening's milk preceding the tithing day flett upon the morning of the tithing-day, and of the morning's milk of the tithing-day unflett, and the defendants alledged that the same should be made of the morning's milk and evening's milk of the same day.

The Court de-
creed the calves
to be delivered
at the parsonage.

IT IS ORDERED BY THE COURT, that for the future the tithe calves, as they come due, shall be paid and delivered to the plaintiff at his parsonage-house.

AND

AND IT IS ALSO ORDERED, that, for the future, the tithe cheeses which shall be yearly paid to the plaintiff, shall be made of the evening's milk preceding the tithing-day flett up in the morning of the tithing-day, and the morning's milk of the tithing-day unflett, according to the custom set forth in the bill, and at such hours and times as the cows are milked for the parties themselves on other days not titheable, without fraud.

WICKHAM
against
THROWER.

that the cheeses shall be made of the milk of the preceding evening and the ensuing morning ;

AND THAT the tithe cheeses shall be delivered, for the future, at the parsonage-house of *Wilby* afore said, and not at the church-porch or chancel of the church.

the cheeses delivered at the parsonage ;

And whereas it is alledged, by the defendant's counsel, that the plaintiff has commenced several suits in the ecclesiastical court against the defendants, touching other titheable matters arising within the said parish,

and that touching other tithes,

IT IS ORDERED BY THE COURT, that the said matters in difference in the ecclesiastical court, and also the difference touching the tithe calves and cheeses pretended to be due to the plaintiff, for the time in the bill mentioned, from the defendants, be referred to the determination of the said *Dr. Ball*, to end the said matters in difference, if he can ; and if he cannot end the same, then the said parties are to attend THE LORD CHIEF BARON, in order to the determination and compofure of the said differences, without costs on either side.

it shall be referred to the chief baron.

EDWARD TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDW. THURLAND.

WIDDRINGTON, D. D. *against* BARKER.

HILARY TERM
26. CAR. 2.

Nowfolk, 11th February 1674.

THIS was a bill to be relieved for the tithes of *Coleseed* in *Terrington* ; the plaintiff being rector ; the defendant *Henson* vicar ; and the other defendants inhabitants.

The tithe of *coleseed* is a great tithe (a), and shall be paid to the rector, and not to the vicar, of the parish in which it is sown.

The Court, after hearing counsel on both sides, and reading the depositions of several witnesses examined in the cause, took time to consider of the matter ; and on the twenty-ninth of *April* 1675, upon hearing counsel on both sides, and on full debate, and consideration thereof had,

THE COURT is of opinion, that the said tithes of *Coleseed* are due, and ought to be paid to the plaintiff, being rector, and not to the curate or vicar ; that the defendants *Barker* and others shall satisfy and pay to the plaintiff the value of the said tithes of

29th April 1675.

(a) But see the case of *Fish v. Wimberley*, 4th February 1683, 35. Car. 2. in which it is determined, that *coleseed* is a small tithe.

WIDDRINGTON *Coleseed* sown by them upon the lands holden in the said parish for one year ; and that the said defendants shall not be sued, molested, or disquieted for the same by the defendant *Henson*, the curate or pretended vicar of *Terrington* ; and the plaintiff to have his taxed costs.

against
BARKER.

EDW. TURNOR.
TIM. LITTLETON.

HILARY TERM
26. CAR. 2.

TOOKER, Clerk, *against* GRIFFIN.

Essex, 25th January 1674.

THE plaintiff, as rector of *Vauge*, in *Essex*, exhibited his bill touching the tithes of a moiety of *marsh land* called *North Bredward Marsh*, within the said parish. The bill after setting forth his title and right to tithes, stated, that the defendant had possessed a marsh or ground called *North Bredward Marsh*, in the said parish, for six years past ; that the said marsh lies next to the parish of *Pitsey*, and contains about eighty acres, and is worth sixty pounds *per annum* ; that during that time he had fed and depastured the said marsh ground promiscuously with breeding and fatting cattle ; that, in lieu of the tithes of the said marsh, being fed with such barren cattle, the possessors thereof, by custom, used to pay two shillings in the pound yearly, according to the yearly rent of the marsh.

The rector of the parish of *Vauge*, in *Essex*, is entitled to 2s. in the pound yearly, according to the annual rent paid for so much of *North Bredward Marsh* as lies within the said parish.

The defendant answered and pleaded ; AND FOR PLEA SAID, that KING JAMES, being seised in fee of *North Bredward Marsh*, and of the tithes thereof, by his letters patents, dated the third of *February*, in the tenth year of his reign, did grant the said marsh, and the tithes thereof, to *F. Morris* and *F. Phillips*, and their heirs ; that they, by indenture dated the first of *July*, in the eleventh year of *James the First*, did grant, bargain, and sell the said marsh and tithes to *H. Archer* and his heirs ; who did, by indenture dated the twenty-sixth of *May*, in the eighteenth year of *James the First*, convey the tithes, rents, and profits of the said marsh to *Sir Robert Rich* and several others, and their heirs, upon trust, as to the said tithes, and the rents and profits of the said marsh to be employed to the use of the vicar of *Horndon* towards his maintenance, such vicar, or some person for him, preaching yearly one sermon in the church of *Horndon*, on *Saint Peter's Day* in the forenoon ; and that as often as there should be a failure, it should go to the poor of the said parish of *Horndon* ; that the defendant is tenant to the surviving trustee for the said charitable use under a yearly rent, and, as tenant, doth enjoy the same, and for six years past hath so done, under the yearly rent of forty pounds to *W. Whitmore* ; that in the said years he did depasture thereon beasts and sheep, but had no hay or corn off the same, and that the value of the tithes yearly are about four pounds ; that he knew not of any rate tithes, or composition

composition for tithes of the said marsh, but hath paid forty shillings *per annum*, and no more, for the tithes to the trustees for the charitable uses mentioned in his plea.

TOOKER
against
GRIFFIN.

To which plea and answer the plaintiff replied specially, and said, that the marsh mentioned in the bill doth contain one hundred and forty acres, and doth lie one half in the parish of *Pitsey*, and the other part in the parish of *Vauge*; that there hath been, for many years past, paid to the plaintiff's predecessor, by the defendant's testator, forty shillings *per annum*, in lieu of the tithes of the moiety in *Vauge*; that notwithstanding any thing in the defendant's plea or answer, the plaintiff, as rector of *Vauge*, is entitled to the tithes of so much of the marsh as lies in the said parish, or to the forty shillings a-year in lieu thereof.

The defendant rejoined; and witnesses were examined on the plaintiff's part.

Upon hearing of counsel on both sides, and reading several depositions in the cause, it appeared to the Court, that one half of the said marsh called *North Bredward Marsh* doth lie within the parish of *Vauge*, and that the tithes thereof ought to be paid to the rector there for the time being.

IT IS THEREUPON ORDERED BY THE COURT (the value of the tithes of the said half marsh being admitted by both parties to be forty shillings by the year), that the said defendant do pay to the plaintiff eight pounds for the arrears of the said tithes for four years last past, with his costs, according to the course of the court.

EDWARD TURNOR.
CHR. TURNOR.
TIM. LITTLETON.
EDWARD THURLAND.

GRAY, Clerk, *against* SAWYER.

Berkshire, 3d May 1675.

EASTER TERM
27. CAR. 2.

THE plaintiff, as vicar and incumbent of the vicarage and parish-church of *Hagbourne*, in *Berkshire*, claimed all tithes, both great and small, in a certain inclosed ground, called *Hagbourne Park*.

The vicar of *Hagbourne*, in *Berkshire*, is intitled to the tithe of hay made in *Hagbourne Park*.

The defendants said, that *William Earl of Craven*, by his indenture of the twentieth year of this king, did demise, grant, and to farm let, to *E. Keate*, all the tithes of hay, corn, wool, and lamb, and all other tithes of the whole parish of *Hagbourne*, to the parsonage there belonging, for ninety-nine years, upon three lives; that *E. Keate* being thereby possessed of the said premises, did, soon after, grant, for certain years not yet past, the same to the defendants; that in respect thereof they yearly pay to the plaintiff

L 2.

twenty

GRAY
against
SAWYER.

twenty shillings, and to the *Earl of Craven* four pounds ; and that the said defendants do also yearly pay, in respect of the said premises, to the mother-church of *Sarum*, forty shillings ; all which are in full satisfaction of all tithes for the said premises.

The matter in difference being the tithe hay of *Hagbourne Park*, it was referred to a trial at law ; and after full evidence, a verdict passing for the plaintiff,

IT IS ORDERED BY THE COURT, that the defendants do forthwith pay to the plaintiff the value of their tithe hay which they had and inned off and from the said ground called *Hagbourne Park* from the time they became tenants of the same, being agreed by both parties to be fifteen pounds.

EDWARD TURNOR.
TIM. LITTLETON.
EDWARD THURLAND.
VERE BERTIE.

TRIN. TERM,
27. CAR. 2.

DYDE, Clerk, against KINCH.

Oxfordshire, 21st June 1675.

The rector of the parish of *Wigginton*, in *Oxfordshire*, has no right to the small tithes arising in the hamlet of *Milcombe*, in the parish of *Bloxham*, in the said county.

THE rector of *Wigginton*, in *Oxfordshire*, claimed all the predial, privy, and mixed tithes thereto belonging.

The defendants confessed the plaintiff to be rector of the parish, and that they held the several yard lands for the said years in the bill charged ; and that the plaintiff might be entitled to great tithes from them ; but they denied, that they ought to pay their privy tithes to the plaintiff ; for that the hamlet of *Milcombe* doth not lie within the parish of *Wigginton*, but within the parish of *Bloxham* ; and that for the said privy tithes they have paid, by composition, five shillings a yard land for every yard land they held, for the years in the bill mentioned, to the vicar of *Bloxham*, in lieu of the privy tithes in *Milcombe*, which they conceive a rateable yearly value for the same.

THE COURT directed an issue, whether the small tithes of all, or any, and which of the six yard lands lying in the hamlet of *Milcombe*, or any, and what part of the tithes thereof, do of right belong, and ought to be paid, to the rector of *Wigginton*.

A trial was accordingly had, and a verdict was given, that the tithes in question, demanded of the defendants, did not belong to, nor ought to be paid to, the rector of *Wigginton*. The defendants were therefore dismissed of and from the said bill, with costs.

HATCHER *against* RIDLEY.TRIN. TERM,
27. CAR. 2.*Lincolnshire, 30th June 1675.*

THE plaintiffs, as executors of the last will and testament of *Charles Skipwith*, deceased, exhibited their bill, stating that the said *C. Skipwith*, by lease from the dean and chapter of *Lincoln*, dated the ninth of *January*, in the eighteenth year of his present majesty's reign, was seised to him and his heirs during his own life, and the life of two others, of and in the rectory or parsonage impropriate of *Gosberton*, otherwise *Gosberkirke*, and of all messuages, glebe lands, tithes, customary tithes, or rates for tithes, oblations, obventions, and other duties, to the said rectory and parish belonging; that the said *C. Skipwith*, for several years past, was owner of the said rectory, and thereby entitled to the tithes and rates for tithes arising within the said parish; that the defendant (living out of the said parish) was, for several years, farmer and occupier of certain marsh lands in the said parish called *Sir Robert Carr's Marsh*, containing four hundred acres, worth four hundred pounds a year, which he stocked and depastured with sheep, beasts, and other titheable cattle; that there hath been a custom, time out of mind, used in the said parish, that all persons living out of the said parish, and occupying any pasture or meadow grounds in the marshes in the said parish, have used to pay yearly to the owners of the rectory twelvecence an acre for the tithe of sheep and cattle depastured within the said parish, and for tithe hay; that the said *C. Skipwith*, on the eleventh of *November* 1672, made his will, and appointed the plaintiffs his executors, and died in *October* 1673; and that they had proved the same, and thereby become entitled to the said rate tithe, which the defendant refused to pay.

The defendant answered, and set forth, that *Carr's Marsh* contains, by estimation time out of mind, two hundred and forty customary acres, and that a *modus* or *rate tithe* hath been paid, for the same, of twelvecence the customary acre, by occupiers not inhabiting in the said parish; that he was occupier of certain marsh lands in the said parish, but not four hundred acres; that he occupied part of the said two hundred and forty acres; that he and his undertenants fed sheep and cattle thereon; that he knew not how the plaintiffs reckoned the acres, or how their *modus* or *rate tithe* is applicable thereunto, but conceived the same to be a new invention to destroy the old *modus*, which, time out of mind, hath been concerning marsh land in that parish; that the parishioners of *Gosberton*, time out of mind, have used to keep books of accounts for levies, taxes, and parish payments, and in them, or some other books, are contained (in nature of a terrier) the number of acres of marsh lands in the said parish

HATCHER
against
RIDLEY.

parish (whereof the two hundred and forty acres are parcel) ; that according to that number, twelvepence the acre hath been, and ought to be, paid, for all levies, taxes, tithes, and parish dues, by every farmer or occupier not inhabiting in the said parish, according to the estimation in the said books and terriers, and not otherwise ; that he had, for the said time, farmed part of the said two hundred and forty acres ; and that, according to the custom, he tendered, after the said rate tithe, the sum due, which was refused, and that he was willing to pay the same.

The plaintiffs replied, and thereby set forth, that the composition of twelvepence an acre ought not to be paid after the common estimate of the number of acres, or the books and terriers, and other rates or levies in the town of *Gosberton*, but according to the real number and quantities of acres, according to the laws and statutes of this kingdom, and the usual measure in other places.

The defendant rejoined ; and the cause being at issue, witnesses were examined on both sides ; and upon opening the pleadings, and reading the answer,

It appearing to the Court, that the marsh called *Sir Robert Carr's Marsh*, lying in the parish of *Gosberton*, doth contain three hundred and thirty-five acres ; and that twelvepence an acre *per annum* ought to be paid as a *modus* or rate tithe for the said marsh, according to the real quantity of acres, and not according to common estimate.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff after the rate of twelvepence an acre for the tithes of the said marsh called *Sir Robert Carr's Marsh*, containing three hundred and thirty-five acres, for three years, by him occupied and enjoyed in the said years, allowing what hath been already paid.

EDWARD TURNOR.
TIM. LITTLETON.
EDWARD THURLAND.
VERE BERTIE.

MICH. TERM,
27. CAR. 2.

TURNOR, Clerk, against WEEDON and Others.

Oxfordshire, 18th November 1675.

The rector of
Soulderne, in the
county of *Ox-*
ford, claims tithes
in kind.

THE bill stated, that for seven years last past the plaintiff was lawful rector of *Soulderne*, in the county of *Oxford*, and lawfully entitled to all tithes and duties thereto belonging, predial, personal, and mixed.

The

The defendants *Weedon, Kilby, Lord, Dodwell, and King*, put in their plea and answer; and the defendants *Wells and Smith* their answers; AND FOR PLEA SAID, that the plaintiff, by his bill demands tithe wood for hedge rows and coppice woods; for dry beasts, for the time they were kept and fatted; for barren sheep sold before shear-time; and for the second crop, or aftermath of meadow ground; that, time out of mind, there hath been a *rate tithe* for barren sheep and dry beasts kept and sold within the said parish; viz. fourpence, and not above, for every cow kept, fatted, and sold there; one halfpenny for every barren sheep sold after *Candlemas*, and before shear time; the third of the wool for all sheep brought in after *Candlemas*, and sold before *Candlemas* following; and that no other tithes are due for the same; that for the aftermath of meadow no tithes at all are due, by custom nor otherwise; nor for hedge rows or coppice wood spent or used in the premises to which the same belong; nor for any horses kept and used about the same, or for any other use: and they set forth the particulars of their tithes.

TURNER
against
WEEDON.

The defendants plead a *modus* of 4d. for every barren sheep and dry beast; a halfpenny for every sheep sold after *Candlemas*; a third of the wool of all sheep brought in after *Candlemas*; and that no tithe is due for coppice and hedge row wood used in husbandry.

Upon arguing this plea it was ordered, that the defendants should answer over, and the benefit of the plea be saved to the hearing.

The defendants thereupon put in a further answer; the plaintiff replied; and issue being joined, witnesses were examined; and the cause came on to be heard the eleventh instant.

And upon hearing counsel on both sides, and reading several depositions taken in the cause, and a decree made in a cause the third of *July*, in the fifteenth year of *Charles the First*, in chancery, whereby it appeared, that the matter had been referred to the then *Bishop of Oxford* to examine the best way for the payment of tithes, and whether the rate of forty shillings a yard land, formerly decreed at the first inclosure, would be prejudicial to the church, who made his certificate, that he did conceive the payment of tithes in kind was, and would be for the future, a greater benefit to the church than the forty shillings *per annum* in lieu of tithes for every yard land could be; it was ordered, adjudged, and decreed, in the said court of chancery, that the said decree, as touching the composition and agreement for payment of tithes should be reversed and made void as against the plaintiff and the church of *Soulderne*, and the plaintiff be left at liberty to take his tithes in kind, any thing in the aforesaid decree to the contrary notwithstanding; and upon long debate of the matter, for that it was insisted upon by the counsel for the plaintiff, that the custom of one halfpenny a sheep sold before shearing or after had already been adjudged an unreasonable custom at common law, in the case of *Weeden v. Harden (a)*, in the late *King Charles'* reign.

(a) Reported in *March's Rep.* 79.

TURNER
against
WEDDON.

THE COURT declared they would further consider thereof.

The cause now came on again ; and on reading several depositions, and hearing counsel on both sides ; and on full debate concerning the customs pretended by the defendants ;

But the Court declared all the said customs to be unreasonable ;

THE COURT declared, that the custom of a halfpenny for a sheep was an unreasonable custom.

And as to all the other customs (except fourpence for a dry cow, and the tithe of aftermath, or second crop of meadow, for which the Court will direct a trial at law), they declared all the other customs pretended by the defendants to be unreasonable, and do overrule the same.

and decreed the tithes of coppice wood, hedge rows, and loppings ; sheep unshorn, dry cattle, wool, milk, lamb, and calves, to be paid in kind.

Whereupon it is this day ORDERED BY THE COURT, that the defendants shall pay their tithes in kind to the plaintiff, viz. for coppice wood, and for hedge rows, and loppings of trees, when sold or not spent in the house ; the tenth of the value of the depasturage of sheep, according to the time of their being kept, sold, and removed unshorn ; and likewise for all other dry cattle, fed, kept, or depastured (except beasts of the plough and pail, and dry cows, which is referred to a trial at law), to pay according to the value of the herbage : tithe wool to be paid, and tithe milk, at all times in the year ; lambs to be tithed when fit to live without the dam ; and calves to be paid in kind : and it is referred to the deputy-remembrancer to compute and report the same.

And as to the custom of fourpence for every dry cow fed, and for the aftermath, or second crop of meadow, the same is referred to a trial at law, and the equity reserved till after such trial had.

HILARY TERM
27. CAR. 2.

COX against LIVESAY and Others (a).

Somersetshire, 18th February 1675.

The plaintiff claims the tithes appurtenant to the dissolved chapel of Knoll, in the parish of Bedminster, in the county of Somerset.

THE bill stated, that William Cox, deceased, two years before the month of May, in the year 1672, was seised in fee simple of the dissolved chapel of Knoll, within the parish of Bedminster, in the county of Somerset, and of and in all manner of tithes whatsoever thereunto belonging, and was lawfully seised in fee of all manner of tithes yearly happening within the chapelry of Knoll and tithable places thereof, and of and in all compositions and customary and other payments in lieu thereof, and all other duties whatsoever due or payable to the owners and impropiators of the said chapel for the time being, their

(a) See the case of Thompson v. June 1703, Trin. Term, 2. Anne ; and Wright, 26th November 1683, 35. Gibbs v. Goodman, 11th June 1733, Car. 2. Horton v. Higginbottom, 22d Trin. Term, 7. Geo. 2.

farmers,

farmers, or tenants; and being so seised, about the month of *May* 1672, did grant and convey to the plaintiffs, *Bath* and others, and their heirs, the said chapel, tithes, and premises; by reason whereof they became entitled to, and seised in fee thereof; that about the month of *November*, before the bill was filed, the said *Cox* died intestate, and letters of administration were granted of his personal estate to the plaintiff *Mary Cox*; that the defendants have been occupiers of divers lands within the precincts of the said chapelry, and have refused to pay tithes, or any composition for the same, during the said *William Cox's* life, or since, to the other plaintiffs.

Cox
against
LIVESAY.

The defendants appeared and answered, and set forth that they knew nothing of the plaintiff's title to the premises. The defendants, *Livesay* and his wife, said, that they were owners of the inheritance of the said manor of *Knoll*, with its appurtenances, and the lands in the occupation of the defendants, *Gore* and others, they being tenants thereof; that the plaintiffs are not entitled to the tithes of the premises in question, or to any satisfaction in lieu thereof; but that the tithes, or satisfaction for them, belong to themselves, in regard the ancestors of the defendant, *Martha Livesay*, and those whose estate they have, as they were informed, always or many years claimed and enjoyed the said tithes. The defendant, *Martha*, said, that, by an answer in chancery of *L. Paradine*, her ancestor, under whom she claimeth, to a bill exhibited by the said *William Cox*, deceased, concerning his title to the tithes in question, by which the said *L. Paradine* claimed the inheritance of the tithes and premises, he denied that he was liable to any composition for the same; but how far the said manor of *Knoll*, or what tithes or composition were or are payable, or what or how the chapelry came to be annexed to the said manor, or the distinct title of the said *L. Paradine*, the defendant *Livesay* being lately married, and his wife being under age, they could not set forth.

The defendants say that they are owners of the manor of *Knoll*, and that the tithes thereof belong to them, as having always enjoyed the same;

but how the said chapelry became annexed to the manor they cannot say.

The other defendants likewise put in their answers; and the defendant *Daniel* lately paid some tithes to *Mr. Cox*, deceased, for the land he held, he having recovered the same at law.

The plaintiffs replied; and witnesses were examined on each side.

Upon hearing counsel on both sides, it is referred to a trial at law upon the statute 2. *Edw.* 6. c. 13, for not setting forth the tithes; and the rest of the defendants, who have answered the bill, are, by consent, to be bound by the event of that trial, and if the plaintiffs recover are respectively to pay tithes for the lands by them set forth in their answers, and, as appears by

An issue directed on the statute 2. & 3. *Edw.* 6. c. 13.

Cox
against
LIVESAY.

by the proofs in the cause, holden by them, &c.; the equity of the cause to be reserved to the court.

5th Feb. 1676.
A verdict found
for the plaintiff.

According to which order a trial was had, and upon full evidence of the titles on both sides, a verdict passed for the plaintiffs. Now upon reading the said order and *postea*,

The tithes de-
creed according-
ly.

IT IS ORDERED BY THE COURT, that the defendants shall each of them respectively pay to the plaintiffs the value of their tithes according to the proofs in the cause.

But the title of
one of the de-
fendants, an in-
fant, not to be
concluded there-
by.

And in regard it was urged by the defendant's counsel, that the defendant *Martha*, the wife of *Wm. Livesay*, is an infant.

IT IS DECREED BY THE COURT, that the said trial at law shall not be construed to conclude the said *Martha* in her title.

EASTER TERM
21. CAR. 2.

REMINGTON against THORNTON.

Lancashire, 19th April 1676.

The tithes of
the parish of
Mellin, in *Lan-*
castre, ordered
to be paid to the
lessee of *Lord*
Morley, who
was seised of the
said rectory, in
his demesne as of
fee.

THE bill stated, that *Thomas Lord Morley* and *Monteagle*, by indenture dated the twenty-ninth of *April*, in the twenty-second year of CHARLES THE SECOND, demised to the plaintiff all the tithes of wool, lamb, and calves, within the rectory and parish of *Mellin*, in the county of *Lancaster*, and all the penny's halfpenny's, and twopenny's yearly arising and payable for the odds of tithe fleeces of wool, lambs, and calves, according to the custom of tithing used within the said parish and rectory, to have and to hold the same for the term of twenty-one years, at forty pounds a year; that by virtue thereof the plaintiff is, and ever since hath been, possessed of the said tithes and premises as farmer thereof, and hath, for the most part, received the said tithes; that in the said parish there is a custom that every inhabitant within the said parish and rectory of *Mellin* shall yearly pay one tithe calf for every ten, nine, eight, seven, or six calves renewed, and for every five calves half a calf, or the value thereof; and for lambs and fleeces of wool, one halfpenny for every lamb and fleece of wool under five; the proprietor, rector, or farmer for the time being paying back to every such inhabitant for every nine, eight, seven, or six lambs or fleeces of wool so many halfpenny's as the same number of lambs and fleeces of wool should fall short of ten,

The defendants denied the custom of tithing, and pleaded a discharge of payment of all manner of tithes under a grant made to the abbot of *Croxton*, in the third year of *Edward the Second*, and by several exemptions, discharges, and other evidences.

IT IS ORDERED BY THE COURT, that the defendants shall forthwith pay to the plaintiff the value of the tithes so detained from him for the time aforesaid, as set forth in their answers (a). REMINGTON
against
THORNTON.

WILLIAM MONTAGUE.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

(a) On the 16th of June 1673, 25. stating the custom as in the present bill,
Car. 2. the present plaintiff, as lessee of. and the tithes were decreed to him ac-
Lord Merley, exhibited a bill in this court cordingly.
against Thompson and others, for tithes,

BENSON against HARPHAM.

EASTER TERM
28. CAR. 2.

Lincolnsbire, 24th April 1676.

THE plaintiff, as farmer of the prebend of North Kelsey, in the county of Lincoln, exhibited his bill, stating that he, for three years past, was farmer of the said prebend, and entitled to the tithe of corn, grain, hay, wool, lamb, mort sheep, wood, dry, barren, and unprofitable cattle, and all compositions for the same. The plaintiff claims the tithes of the prebend of North Kelsey, in Lincolnshire, as the lessee of Dr. Stillingfleet, the prebendary.

The defendants G. Brown, H. Robinson, and W. Thompson, answered and disclaimed; and thereby denied that they enjoyed or occupied any lands or tenements within the said parish, or had any tithable thing therein in the said years. Three defendants disclaim holding any lands in the parish.

The defendant R. Brown confessed that he was occupier of a cottage within the said parish, worth twenty shillings per annum; but had no tithes due to the plaintiff. Brown confesses occupying a cottage.

The defendants, Harpham, and several others, confessed that the plaintiff is farmer of the said rectory, whereof Dr. Stillingfleet is prebendary, and that the tithes of corn, hay, wool, and lamb, or some modus or composition for certain grounds in North Kelsey, and an halfpenny for every mort sheep that dies after Candlemas only, do belong to the rector of the said rectory; but knew not of any other tithes belonging to the plaintiff; and that time out of mind all other tithes have been, and ought to be paid to the vicar, there being in the said parish a vicarage endowed. Harpham states a modus of a halfpenny for every mort sheep dying after Candlemas, and says that all other tithes are due to the vicar;

The defendant Harpham further said, that he was occupier of certain grounds within the said parish, and that the tithes of the same were duly paid to the plaintiff, except that for some part of the ground a modus or composition is due, and was paid him the two first years, and that the third year the defendant tendered the same, and the plaintiff refused to receive it; that he had paid and that a modus is due for the herbage of certain lands.
to

BENSON
against
HARPHAM.

to the plaintiff the tithe of his wool and lambs, and an half-penny for every mort sheep.

Hall pleads payment.

The defendant *I. Hall* further set forth, that he, for several years, was occupier of a messuage and one close, and that he had several sorts of corn and grain in the said close, and paid to the plaintiff the tithes of the same.

Cook pleads payment.

The defendant *Cooke* said he was occupier of lands and had hay growing thereon, and that he had paid his tithe.

Pennell pleads an exemption by order of commissioners of sewers.

The defendant *I. Pennell* said, that he was occupier of lands, and that he had duly paid his tithes; but that in the year 1674, he was occupier of fourteen acres of meadow, for which he set out no tithes for the same, because it is part of five thousand, eight hundred, and twenty-seven acres set out and allotted to *Sir John Monson*, his participants, and adventurers, tithe free, by several decrees of sewers, and confirmed by an act of parliament made in the fourteenth year of CHARLES THE SECOND.

Eldingby pleads payment.

The defendant *Eldingby* said, that he occupied part of the said lands; and several other defendants said that they held lands in the said parish, and had paid their tithes due for the same.

Pennell's lands exempted;

To which answers and disclaimer the plaintiff replied; and the defendants rejoined; and witnesses were examined on both sides; and upon opening the bill, answers, and disclaimer, and upon reading an exemplification of a law of sewers made in *Charles the First's* time, whereby it appears that five thousand eight hundred and twenty-seven acres lying in the level of *Aucholme*, and drained by *Sir John Monson*, and others, are discharged of tithes; and an act of parliament made in the fourteenth year of *Charles the Second*, confirming the same; and

and the small tithes belong to the vicar.

upon reading an endowment of the vicarage of *North Kelsey* made in the year 1658, and an augmentation of the said vicarage, whereby it appears that the tithes of wood, and all other small tithes belong to the vicar of the said vicarage; and upon reading several depositions of witnesses taken in the cause, there being no proof against the defendants *R. Brown*, *G. Brown*, *H. Robinson*, and *W. Thompson*,

IT IS ORDERED BY THE COURT, that the said defendants shall be and are hereby dismissed of and from the said bill with costs.

A modus payable for the lands in Harpham's possession.

And as to such part of the bill as prays relief for the tithes of *Gile Carr*, *Sower Barfe*, and *Sheep Coate Hill*, occupied by the defendant *Harpham* in the said years;

It appeared to the court, that a *modus* or composition ought to be paid for the same, and that the same was paid to the plaintiff for the years 1672 and 1673, before the filing of the bill, and also for the year 1674, since the filing of the bill.

IT

IT IS ORDERED BY THE COURT, that the said bill shall be dismissed, as against the said defendants, so far as it relates to the said three parcels of land, without costs.

BENSON
against
HARPHAM.

And it is further ordered by the Court, that it be referred to *trial at law*, touching the defendant *Pennell*, upon two issues, An issue directed.

FIRST, Whether the tithes of the herbage and feeding of barren and unprofitable cattle, in the parish of *North Kelsey*, be due to *the vicar*, or to *the rector* there? Whether the assignment of barren cattle is due to the rector or the vicar;

SECONDLY, Whether tithes in kind be due and payable for so much of the said five thousand eight hundred and twenty-seven acres set out and allotted to the said *Sir John Monson*, his participants, and adventurers, as do lie within the said parish? and whether the sewer lands lie in the parish.

And as to the defendants, *P. Harpham*, and several others,

It appearing to the Court, that they had duly set out their several tithes, and that the plaintiff had put them particularly to prove the payment of the same,

The Court will consider of costs.

Upon the said trial a verdict was given for the plaintiff, in both the said issues, upon full evidence. Now upon reading the said order and *possea*, and on much debate, 27th Nov. 1676. Verdict for the plaintiff.

IT IS ORDERED BY THE COURT, that the defendants, *P. Harpham*, and several others, shall forthwith satisfy and pay to the plaintiff their tithes of herbage and feeding of barren and unprofitable cattle due and in arrear to the plaintiff from them; and that the defendants, *J. Pennell* and *W. Eldinge*, shall forthwith satisfy and pay to the plaintiff their tithes for the meadow and pasture, or *Carr's* ground, part of the five thousand eight hundred and twenty-seven acres set out and allotted as aforesaid, and it is referred to the deputy remembrancer, to cast up and report the value of the tithes of the herbage and feeding of barren and unprofitable cattle, and the tithe hay due from them respectively. Harpham ordered to pay tithes for barren cattle to the plaintiff; and Pennell to pay tithes of the sewer lands.

And forasmuch as it was, on the twenty-fourth of *April* last, ordered that *R. Brown*, and several others, should be dismissed with costs, and that this court would consider of costs for the defendant, *P. Harpham*, and others,

IT IS ORDERED BY THE COURT, that the defendants shall have costs taxed them, from the commencement of this suit, until the said twenty-fourth of *April* last, and that the plaintiff shall have taxed costs from the commencement, until the end of the same. Costs.

And it is further ordered, that the defendant *W. Roe* shall be and is hereby dismissed of and from the said bill, with his costs.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.
PRESTON

EASTER TERM
22. CAR. 2.

PRESTON, Bart. *against* CONUIE.

Westmoreland, 9th May 1676.

The plaintiff
claims the tithes
of the rectory of
Burton, in West-
moreland.

THE plaintiff by his bill shewed, that he had been proprietor of the rectory of the parish of *Burton, in Westmoreland*, for six years past, and that he pays yearly a fee farm rent to his majesty for the same, and ought, as rector there, to have all manner of tithes issuing, &c. within the same.

The defendant
pleads, that the
lands he holds in
the parish

The defendant answered and said, that he knew not that the plaintiff, for the time stated in the bill, had been proprietor and owner of the said rectory, or that he paid any fee farm rent for the same, but confessed that, for divers years last past, he had been owner of eight acres of land there, and that for two years past, and no more, he had sown several acres thereof with grain, and had kept some cattle for his use and benefit, but denied that the tithes were parcel of thereof belonged to the plaintiff, for that the lands did heretofore belong to, and were parcel of the late dissolved monastery of *Cockersand*, of the order of *Promonstratenses*; and being in the occupation of the said monastery at the time of its dissolution, they were discharged from the payment of tithes by the statute 31. Hen. 8. c. 13.

Cockersand, which abbey or monastery was of the order of the *Promonstratenses*, which order did, amongst other privileges and immunities granted and allowed to them by the kings and queens of this realm, hold and enjoy all their manors and lands freed and discharged from the payment of all manner of tithes, whilst they had the same in their own hands and occupation, and did with their own cost till and manure the same; that by an act made thirty-first year of *Henry the Eighth*, it was enacted "that as well the king's majesty, his heirs and successors, as all such persons and their heirs, which then had, or after should have any monasteries, abbeys, priories, or any manors or lands which belonged to them, should have, hold, and enjoy the same, according to their estates and titles, discharged and acquitted from payment of tithes, as freely and in as large and ample manner as the said late abbots had occupied, detained, and enjoyed the same, at the days of the dissolution, &c." that the said eight acres were, at the dissolution, parcel of the possessions thereof, and then held and enjoyed by the abbot, convent, or governor of the said monastery or abby discharged of tithes, and is thence, by certain letters patent and mesne conveyances, legally come to the said defendant and his heirs; and therefore he conceived that he might hold the same freed and discharged from the payment of any tithes whatsoever. He confessed that he had detained his tithes for the said lands, and refused to pay or make any satisfaction for the same, in regard he is inheritor thereof, and husbands and tills it in his own hands, and ought to receive, reap, and enjoy the benefit thereof, pursuant to the said act of parliament; that he could not set forth particularly the quantities or values of the tithes, but believed they might be worth forty shillings a year.

The

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

PRESTON
against
CONVE.

The cause came on to be heard the first instant, when upon hearing counsel, and upon full debate,

IT WAS ORDERED BY THE COURT, that it should be decreed for the plaintiff, for the tithes in question, unless cause be shewn to the contrary.

Now upon hearing plaintiff's counsel, and no one attending for the defendant,

IT IS ORDERED BY THE COURT, that the defendant do pay to the plaintiff four pounds, for the value of his tithes, which he had upon the said eight acres of land, within the said rectory for the two years mentioned in the answer, being the value confessed and set forth in the answer, the plaintiff being willing to accept thereof at that value.

But the tithes
thereof are de-
creed to the
plaintiff.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.

HOLLAND, Clerk, *against* THORNBURGH, Clerk. TRIN. TERM,
28. CAR. 2.
Surry, 12th June 1668.

THE bill stated, that time out of mind the tithes of all corn, grass, and hay, arising and increasing out of any meadow, pasture, or arable land, within the parish of *St. Mary*, in the town of *Guildford*, in the county of *Surry*, and the parish of *the Holy Trinity*, in *Guildford* aforesaid, or either of them have been equally parted and divided between the rectors of the said parishes; all which lands contained about one hundred and fifty acres, excepting nine acres called *Long Close*, and part of *Mauty Lands*, the tithes of which wholly belong to the rector of *the Holy Trinity*, and except six acres, whereof three acres are in *the Castle Close*, and one acre called *Danne Acre*, one acre near *the Castle Close*, and two other little parcels, which wholly belong to the rector of *St. Mary*, and the other moiety to the rector of *the Holy Trinity*; that time out of mind the rector of *St. Mary's* hath received and enjoyed, to his own use, one moiety of all the tithes within the said parishes (except as before excepted), or some composition for the same; that by virtue of the usage and prescription aforesaid, the rector of *St. Mary's* hath good right to one moiety of all the tithes of the said lands, except as before excepted, and ought to enjoy the same; that he became incumbent of *St. Mary's* twelve years since, and hath ever since, till the last year, enjoyed the moiety of the said tithes, or composition for the same; but that the defendant, who hath been rector of *the Holy Trinity*, pretendeth that all the tithes belong

HOLLAND
against
THORNBURGH.

belong to him, and hath received the same, to the amount of twenty pounds, whereas the plaintiff ought to have had one moiety thereof: the bill therefore prayed, that the plaintiff might examine his witnesses *in perpetuam rei memoriam* to prove the said ancient usage and prescription; and that the defendant might set forth what tithes he had received, and the values, and whether he had not a right to a moiety, and that the same might be decreed for the future.

The defendant,
as rector of the
parish of the Holy
Trinity, denies
the custom.

The defendant said, that he had been rector of *the Holy Trinity* ever since *June 1671*, and that he had endeavoured to receive all the tithes to his own use, ever since he was rector there, but that the plaintiff had hindered him, under the pretence of the usage and prescription, as stated in the bill; that he had heard there was such a usage between the two rectors, but knew not that it was time out of mind, and whether the tithes (except as in the said bill is excepted) are to be divided between the two rectors, he prayed the judgment of the Court. He also said, that the value of the tithes he received did not amount to more than twenty-pounds in the year during which he received the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined herein.

Upon hearing counsel on both sides, and reading the depositions of divers witnesses taken in the cause to prove the prescription in the bill mentioned;

Tithes decreed
according to the
prayer of the
plaintiff's bill.

IT IS ORDERED, ADJUDGED, AND DECREED, that the plaintiff and his successors, rectors of the said parish of *St. Mary*, in *Guildford*, shall for ever hereafter have, take, and receive to his and their own use and uses, one moiety of all the tithes of corn, grass, and hay, arising and encreasing out of any of the meadows, pastures, or arable land within the parish of *St. Mary*, in *Guildford*, and the parish of *the Holy Trinity*, in *Guildford*, or either of them (excepting nine acres called *Long Close*, and part of *Mauty Lands*, the tithes of which wholly belong to the rector of the church of *the Holy Trinity*, and except six acres, whereof three acres are in *the Castle Close*, one acre called *Donne Acre*, one acre near *the Castle Close*, and two other little parcels, the tithes of which wholly belong to the rector of *St. Mary*).

AND IT IS FURTHER ORDERED, that the said defendant shall forthwith pay to the plaintiff ten pounds, being the value of the moiety of the said tithes, for the said year in arrear, according to the answer.

WM. MONTAGU,
EDW. THURLAND.
VERE BERTIE.

SKYNNER

SKINNER, Clerk, *against* SMITH.TRIN. TERM,
28. CAR. 2.*Worcestershire, 8th June 1676.*

THE bill stated, that for six years past, the plaintiff was, and now is the rector of the parish church of *Hartlebury*, in the county of *Worcester*, and, as rector, ought to have all manner of tithes, both great and small, coming, &c. within the said parish.

The rector of *Hartlebury* in *Worcestershire*, claims the tithes of *Hartlebury Park*.

The defendant confessed the plaintiff's title to the rectory, and tithes, and stated that he had paid the plaintiff all tithes due to him, except the tithes of certain lands, containing eighty odd acres, called *Hartlebury Park*, to which he had been tenant about four years, at forty-eight pounds a year; that he had depastured several cattle upon the said ground, but cannot set forth the particular number; that the *Bishop of Worcester*, and his predecessors, for the time whereof the memory of man is not to the contrary, have held the said lands freed and discharged from all tithes; that he had two colts and one calf, during the said years, the tithe whereof is fourpence a colt, and one penny in a shilling for a calf, which is tenpence; that he depastured on the said lands all sorts of young cattle for several strangers, and yearly kept sheep, and sheared some yearly, and had some lambs; and he set forth the value of the tithes; and that for sheep sold before the shearing time, the usual tithe is fourpence a score; and that the full tithes of the said lands was yearly worth about twenty shillings.

The defendant says that *Hartlebury Park* is tithe free;

but he states the manner in which he has used the park

and a *modus* as to sheep.

Upon hearing counsel on both sides, and reading several depositions taken on behalf of the plaintiff, whereby it appeared, that before the disparking of the said park, the shoulder of every deer, killed in the said park, was paid to the rector of the said parish, for and in lieu of the tithe of the said park; and upon long debate of the matter,

But the park having paid a shoulder of venison in lieu of tithes,

IT IS ORDERED BY THE COURT, that the defendant shall forthwith pay to the plaintiff the values of the tithes coming, growing, and renewing within the said park, for the said four years, in the bill mentioned, according to the answer, which at twenty shillings *per annum*, amount to four pounds.

the defendant is ordered to pay the tithes thereof.

WM. MONTAGU,
TIM. LITTLETON,
EDW. THURLAND.

TRIN. TERM,
28. CAR. 2.

WEBB, Clerk, *against* ARNOLD.

Southampton, 3d June 1676.

The vicar of *Kingsclere*, in *Hampshire*, claims the tithes of the vicarage, and of the chapelries thereto annexed. **T**HE bill stated, that the plaintiff for eight years past had been lawful vicar of the perpetual vicarage of *Kingsclere*, in the county of *Hants*, and of the chapelries annexed, and was thereby entitled to all tithes, as well great as small, arising within the said parish, and the titheable places thereof, to the said vicarage belonging.

The defendant *Arnold* confesses the possession of lands at *Sidmanton*, in the said parish, but says they are ancient demesne, and only liable to a modus of 40s. a year, which he has paid. The defendant *Arnold* answered, and said, that he had been, for four years past, tenant of divers lands in *Sidmanton*, in the said parish; that about seventy-seven acres thereof was ancient demesne lands; and, that, time out of mind, a certain modus of forty shillings a year was payable to the vicar of *Kingsclere* afore said, for all the tithes of all the demesne lands in his possession, and all other demesne lands in *Sidmanton* afore said, in the possession of his landlord *William Kingmill*, which modus of forty shillings a year had been duly tendered by his landlord, or some person for him, during all the time he had held the same; and as to the titheable matters accruing upon the other lands which he held within the said parish, he said, that he had tendered all the tithes due to the plaintiff for them, and was still ready to pay the same.

The defendant *Francis* confesses the possession of a warren, and the sale of the conies kept therein. The defendant *Francis* said, that for several years past he had used two hundred and fifty acres of ground in *Sidmanton* afore said, for a warren only, and made profit of the conies, during the said time, and believed that there was never any tithes paid for conies upon the said warren, or any other warren within the said parish, to the vicar.

The defendant *Newman* confesses that he is the owner of a warren, subject to a tithe of only 2s. a year. The defendant *Newman* said, that for several years past, he had been tenant of a warren in *Kingsclere*, and that never more than two shillings a year had been paid to the vicar, in lieu of the tithes of all conies and rabbits killed in the said warren, and that so much he had from time to time tendered to the plaintiff, who refused to receive the same. He confessed that he rented another warren, stocked with conies, called *Wakeridge*, which he left at *Michaelmas* was four years, and paid to the plaintiff the tithes thereof.

The defendant *J. Winkworth* pleads a tender of all tithes due from him. The defendant *J. Winkworth* set forth the value of the tithes due from him to the plaintiff, and said that he had tendered to the plaintiff all offerings and church dues, and eleven shillings yearly, which the plaintiff had usually received in lieu of all tithes.

The defendant *N. Winkworth* pleads payment of part, and tender of the residue. The defendant *N. Winkworth* set forth the value of the tithes due from him, and that he had paid some part, and tendered

tendered, for the other part, the accustomed sums due for them.

WEEK
against
ARNOLD.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon opening the pleadings, and reading several depositions taken in the cause, and an ancient endowment of the vicarage of *Kingsclere*, and upon much debate,

The endowment
received in evi-
dence.

IT IS ORDERED BY THE COURT, that a *trial at law* shall be had between the plaintiff, and the defendant *Arnold*; the issue to be, whether a *modus* of forty shillings a year be payable to the vicar of *Kingsclere*, for the time being, in full discharge of all manner of tithes, due to the said vicar, for the *demesne lands* belonging to *Sidmanton Farm*, in the parish of *Kingsclere*?

An issue directed
to try the *modus*
set up by *Arnold*.

And as to the titheable matters accruing upon the other lands which the said defendant held within the said parish, besides the said *demesne lands*,

IT IS ORDERED BY THE COURT, that the said defendant shall pay the same to the plaintiff for the time he hath held the same, after the rate of sixpence in the pound yearly, for every twenty shillings value of the said lands.

Arnold ordered
to pay his other
tithes at the rate
of 6d. in the
pound rent.

IT IS FURTHER ORDERED, that a *trial at law* shall be had between the said plaintiff, and the defendant *Francis*; the issue to be, whether there be a custom throughout the parish of *Kingsclere*, to pay tithe, or something in lieu thereof, for rabbits, within the titheable places belonging to the vicar,

An issue directed
to try whether
rabbits are tithe-
able.

IT IS FURTHER ORDERED, that a *trial at law* shall be had between the plaintiff, and the defendant *Newman*, the issue to be, whether a *modus* of two shillings *per annum* hath been, time out of mind, payable by the owners, for the time being, of the warren in the defendants possession, called *Kingsleas*, in the parish of *Kingsclere*, to the vicar of the said parish, for the time being, in lieu and satisfaction for all tithe conies of the said warren?

An issue to try
the *modus*, set
up by *Newman*.

IT IS FURTHER ORDERED, that it shall be referred to the auditor of the said county, to compute the value of the tithes, due from the defendants *J. and N. Winckworths*, and to certify the same.

The auditor to
compute what
tithes are due
from *J. and N.*
Winckworth.

IT IS FURTHER ORDERED, that the defendants *Arnold*, *Francis*, and *Newman*, at their own charges, shall have a copy of the ancient endowment of the vicarage of *Kingsclere*.

The defendants
to have a copy
of the endow-
ment.

After which hearing, the defendant *Newman* died, and the suit was revived against *B. Newman*, his executrix, and, by order, the issues were to be put into one record.

14th Nov. 1678.
The suit revived
against *New-*
man's executrix.

WEBB
against
ARNOLD.

A trial was accordingly had upon the said issues, and the plaintiff was non-suited upon full evidence.

The plaintiff
non-suited,
The defendant
dismissed.

THE COURT therefore ordered, that the said defendant be absolutely dismissed this Court of, and from the said bill, and the matters and things therein contained (a).

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
FR. BRAMSTON

(a) See the case of *Kent v. Webb*, ante page 79. ; *Powlet v. Bates*, post. 9th June 1774. Trinity Term, 14. Geo. 3. ; and *Toll v. Pierce*, post. 22d February 1781, Hilary Term, 21. Geo. 3.

MICH. TERM,
28. CAR 2.

DURANT, Clerk, against BUSH and Others.

Buckinghamshire, 16th November 1676.

The vicar of *Caversfield*, in the county of *Bucks*, claims the arrears of tithes for 12 years, during which time the church had been void, viz. 7l. annually from the rector or impropriator of the said parish, and all the tithes of corn, hay, and small tithes arising out of four yard lands, in the parish of *Stratton Audley*, in the county of *Oxford*.

THE plaintiff, by his bill, stated, that he was vicar of the parish church of *Caversfield*, in the county of *Buckingham*; that in July 1672 he was lawfully instituted, &c. therein; that the same had been void for twelve years before; and that he is thereby entitled to the tithes, duties, and profits, thereunto belonging, with the arrears unpaid during the avoidance; that, for the time whereof the memory of man is not to the contrary, the vicar of the vicarage of the said parish church ought to have and enjoy the vicarage, and backside, and seven pounds in money from the rector or impropriator there, and all tithes of corn and hay, and all manner of small and great tithes yearly coming, &c. out of four yard lands, lying and being in the parish of *Stratton Audley*, in the city of *Oxford*; that the defendant *Bush* had, for twelve years past, received the profits of the said vicarage house and premises, and the seven pounds a year, and, together with the other defendants, did also enjoy the said four yard lands during the said time, and did receive the tithes, issues, and profits thereof, and that they still do enjoy the same, but refuse to discover the quantities and values thereof, and to pay the tithes and the arrears. He therefore prayed a full discovery and account for tithes.

The defendants stated that in the year 1663, the profits of the vicarage were sequestered in the hands of the church wardens, and set forth a composition for the yard lands in *Stratton Audley*.

The defendants answered and set forth, that in the year 1663, the profits of the vicarage were sequestered in the hands of the churchwardens there, but how the same were disposed of they knew not; that they believed there was a vicarage-house, and about one acre of land thereunto adjoining, but knew not that the tithes of corn, hay, wool, lamb, milk, calf, and all manner of small tithes, were ever paid out of the said four yard lands in *Stratton Audley*, in the defendants' occupation, in kind, to the vicar of *Caversfield*, but that a rate, or annual composition, of two pounds twelve shillings a yard land, and so after that rate for two and a half yard lands in *Stratton Audley*, have been

been paid in lieu of tithes to the vicar of *Caversfield*, and they did not believe that ever any claim was made for more.

DURANT
against
BUSH

The defendant *Bush* said, that the same was paid to him from *Michaelmas* 1661 to *Midsummer* 1670, but as no tithes had even been demanded in kind, he had not kept any particular thereof; and also seven pounds a year out of *Caversfield*, and that he had expended the same in serving the cure; and had no arrears of the tithes of the said vicarage in his hands, save only the rateable tithe of two pounds, twelve shillings, for one yard land, received since *Midsummer* 1672; which the vicar had no right to, for that the same belonged to the dean and canons of *Christ Church*, in *Oxford*.

AND OTHERS.
The defendant *Bush* admits the receipt of the monies from both parishes from the year 1661 to 1670, and that he had expended the same in serving the cure, except 2l. 12s. received in 1672, and suggests a title in *Christ Church* college.

The defendants denied all knowledge where or in what place the said lands do lie, out of which the plaintiff doth demand tithes in kind.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the depositions of several witnesses, and on great debate of the matter,

IT IS ORDERED BY THE COURT, that the defendant *Bush* do go to an account before the deputy remembrancer for one and an half yard land, at the rate of three pounds, eighteen shillings, for the same during the time in the bill mentioned, and for the arrears of two yard lands and one half since the account made up and stated between *M. Bard* and the defendant *Bush*, which was in 1672, at the rate of two pound, twelve shillings, for the yard of land, and one pound, six shillings, for the half yard of land, in each year, to the time of the bill, without any deduction to be made; with moderate costs; and the tenants of *Sir J. Burland* are to pay their arrears to the plaintiff forthwith.

The defendant *Bush* ordered to account.

And for that it was urged by the defendant's counsel, that the dean and canons of *Christ Church*, in *Oxford*, were concerned, in right of the college, in the inheritance of the land, out of which the tithes in question are issuing, and do also pretend a right to the said tithes; it is ordered by the Court, that if the said college will consent to answer, they are to be made parties to the bill, and may go to a trial at law, whether the two yard lands and a half yard land, parcel of the five yard lands belonging to the parsonage of *Stratton Audley*, the inheritance whereof is in the said college, ought to pay tithes to the vicar of *Caversfield*?

The college of *Christ Church* admitted parties to the bill, to try whether the tithe in *Stratton Audley* belongs to the college, or to the vicar of *Caversfield*.

In pursuance of the said order, the deputy remembrancer made his report; and upon reading the said decree and report it is ordered by the Court, that the said report be confirmed, and

8th Feb. 1676.

DURANT that the defendant do pay to the plaintiff the sum reported due,
against being fifty-two pounds.
BUSH,
AND OTHERS.

And for that it was alledged by counsel, that the college had been made a party to the bill, and had put in an answer thereto, it is ordered by the Court, that the college give in their answer, whether they will try the title or not?

A trial was had
 and a verdict in
 favor of the vi-
 car.

11th Nov. 1680.

And whereas, on the thirtieth day of *November*, in the thirtieth year of his present majesty, upon the plaintiff's counsel, informing the court that a trial had been had with the college, in which the plaintiff obtained a verdict, upon the issue formerly directed, it was ordered by the Court, that the former decree should be confirmed, and that a commission should be awarded to ascertain and set out the four yard lands and an half, lying in *Stratton Audley*, out of which the said plaintiff ought to receive tithes; and the defendant *Hall* to pay the plaintiff his costs.

In pursuance of the said order a commission issued and was returned, as set forth in the said decree.

Now upon hearing counsel, and reading the said order and certificate, and upon full debate,

The tithes de-
 creed.

IT IS ORDERED BY THE COURT, that the said certificate be and hereby is ratified and confirmed in all the parts thereof, and that the said plaintiff shall for the future have, receive, and take tithes of all and every the several and particular parcels of lands in the said certificate mentioned.

Costs.

AND IT IS FURTHER ORDERED, that the said defendants shall not pay the costs of the said commission, and the execution thereof, nor of this decree, they having already paid the costs upon the former decree.

WM. MONTAGU.
 EDW. ATKINS.
 RD. WESTON.

HELMARY TERM
 29. CAR. 2.

ASFORDBY, Clerk, *against* NEWCOMEN.

Lincolnshire, 19th February 1676.

The rector of **T**HE bill stated, that the plaintiff for twelve years past hath been rector of the parish church of *Mablethorpe cum Staine*, in the county of *Lincoln*, and is entitled to all tithes within the said parish, and to all compositions and customary payments in lieu of tithes.

The defendant
 admits that he
 holds the land
 in *Mablethorpe*,

The defendant answered that he had, during the time mentioned in the bill, been occupier of several acres of pasture-
 in *Mablethorpe*,
 but says he lives in *Salisbury*, and sets up a *modus* for strangers to pay 4d. an acre in lieu of tithes.
 ground

ground in the said parish, and kept thereon sheep and other cattle, and that the tithes of the said stock of cattle were worth, one year with another, three pounds, and ten shillings; that all the time aforesaid, he hath dwelt in the parish of *Saltfleetby*, and not in *Mablethorpe*; that there is a custom in *Mablethorpe*, that all farmers of land within the said parish, living out of the said parish, shall pay to the rector upon the first day of *August*, or afterwards on request, fourpence an acre, in full satisfaction of all tithes, for every acre of pasture ground.

ASFORDBY
against
NEWCOMEN.

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff twelvepence an acre for all new converted ground by him occupied and enjoyed, within the said parish of *Mablethorpe*, in the said twelve years; and also shall pay to the plaintiff fourpence an acre for all ancient pasture ground, by him occupied and enjoyed, within the said parish, for the said time in lieu of tithes (a).

The defendant
decreed to pay
12d. an acre for
new meadow,
and 4d. an acre
for ancient pas-
ture.

(a) See the case of *Asfordby v. Newcomen*, 6th June 1678, Trinity Term, 30. Car. 2. post. 183.; and same case, post. 11th Nov. 1680. in which last case the customs above stated were declared to be unrea-

sonable and void. But in the case of *Caxton v. Langton*, post. 2th Nov. 1690, Mich. Term. 2. Will. & Mary. the Court, taking notice of the foregoing cases, declared the customs to be good.

EASTER TERM
29. CAR. 2.

EARL OF BRIDGWATER, against THEED.

Buckinghamshire, 21st May 1677.

THE scope of the bill was to recover tithes arising and growing due upon the lands lying within the vill of *Horton*, in the parish of *Edleborough*, in the county of *Bucks*, the plaintiff being proprietor of the rectory of the parish church of *Edleborough* aforesaid. The bill stated, that the defendant *Theed*, and his ancestors, had, for many years last past, rented of the plaintiff, and his predecessors, the tithes yearly growing, &c. upon the lands within the said vill of *Horton*, at ten pounds a year; that those lands lay so intermixed with other lands, without any continued bounds, that the individual lands in *Horton*, in the said parish could not be certainly described, set forth, and distinguished from the other lands.

The plaintiff
claims tithes of
lands in the vil-
lage of *Horton*,
in the parish of
Edleborough, but
says they are so
intermixed with
other lands that
their quantities
cannot be ascer-
tained;

The defendants answered, and witnesses were examined, and counsel were heard.

The plaintiff's counsel alleged that there were above two hundred and sixty acres of land lying within the vill of *Horton*, in the said parish, whereof two hundred and forty-five acres were in the possession of the defendant *Theed*, or his tenants, and the residue in the possession of other persons, but that, by the confusion with other lands in the defendant *Theed*'s possession, the meets and boundaries thereof could not be certainly known, nor the individual lands described; therefore they prayed a commission to set out the same.

and therefore
he prays a com-
mission to ascer-
tain the same;

EARL OF
BRIDGEWATER
against
THEED.

but the defend-
ant prays the
quantities may be ascertained by a trial at law.

The defendant's counsel alledged, that there were not above forty-four acres of land within the said vill of *Horton*, which belonged to the parish, and very little part thereof in the possession of the defendant, or his under tenants; they therefore prayed a *trial at law* to ascertain the quantities.

Two issues di-
rected.

THE COURT ordered that an action at law shall be brought against the defendant *Theed*, upon two issues;

FIRST, Whether there be not above forty-four acres of land within the vill of *Horton*, which belong to the parish of *Edleborough*, and how many acres there are above forty-four acres?

SECONDLY, How many acres of land there are within the vill of *Horton*, which belong to the parish of *Edleborough*, in the possession of the defendant *Theed*, or his under tenants, and how many acres in the possession of other persons?

8th Nov. 1677.
A verdict for the
plaintiff, but a
new trial grant-
ed.

A trial was accordingly had, and a verdict was found for the plaintiff upon all the issues; but the defendant's counsel praying a *new trial*, for that the inheritance of both parties was concerned, the Court ordered another trial on the former issues, at the bar of this Court, by a special jury of the county of *Bucks*, on payment of the costs of the former trial to be taxed; that the plaintiff shall have liberty to peruse the defendant's book now offered to be given in evidence, if the plaintiff desire it; the Court giving no directions for making use of the said book at the trial, but ordering that the last verdict may be given in evidence, although another trial be ordered,

The former ver-
dict to be given
in evidence.

Another verdict
for the plaintiff
merely that there
are

Another trial was accordingly had, and after full and long evidence given upon both sides, and upon a view, and reading some part of the defendant *Theed's* pretended ancient book, and on full consideration had and taken thereof by the court and jury, a verdict was found for the plaintiff upon all the issues, namely, as to

245 acres in the
parish of *Edle-*
borough;

THE FIRST ISSUE, that there are two hundred and one acres of land, within the vill of *Horton*, which belong to the parish of *Edleborough*.

232 acres in the
possession of the
defendants.

AS TO THE SECOND ISSUE, that there are one hundred and ninety-two acres of land above forty acres of land, within the vill of *Horton*, which belong to the parish of *Edleborough*, in the possession of other persons.

11th Feb. 1677.
A commission
prayed to distin-
guish the lands.

The cause now coming on for further directions, it was alledged by the plaintiff's counsel, that although, by the two verdicts, it did appear that there were in all two hundred and forty-five acres of land in *Horton*, which belonged to the parish of *Edleborough*, and that two hundred and thirty-two acres thereof belonged to the defendant *Theed*, and were in his, or his under tenant's

tenant's possession, and that the other thirteen acres, residue of two hundred and forty-five acres, were in the possession of other persons; yet that the lands themselves lay so intermixed with other lands, that the individual lands were not certainly known; he therefore prayed that a *commission* might issue, under the seal of this Court, to ascertain the same two hundred and forty-five acres, and two hundred and thirty-two acres, and the other thirteen acres the residue, and also to describe and abut the same, and that the same may be ever titheable to the plaintiff, and the tithes arising from the same paid to him, his heirs, and assigns, their farmers and tenants.

EARL OF
BRIDGEWATER
against
THEED.

It is ordered by the Court accordingly.

And it is further ordered, that the said two hundred and thirty-two acres, and thirteen acres. so to be set forth, are to be titheable, and the defendant *Theed*, his heirs and assigns, and the occupiers of the same, shall from time to time set forth, yield, and pay the tithes arising of and from the same to the plaintiff, his heirs and assigns, farmers, and tenants.

The defendant
Theed ordered to
pay tithes for
245 acres,

And it is declared by the Court, that they ought also to pay and to pay the and satisfy the plaintiff the arrears of the tithes thereof, or the value for the same, for two years ending at *Michaelmas* last.

arrears.

And also that the occupiers of the said thirteen acres ought also to pay their arrears for the said years, and the tithes for the future to the plaintiff, his heirs, assigns, farmers, or tenants.

And it is further ordered, that the defendant *Theed* shall pay to the plaintiff moderate costs, for the last trial at law and in equity, to be taxed by the deputy remembrancer.

Moderate costs.

The other defendants *Firth* and *Cooley* to be dismissed this Court, and from the said bill and the matters therein contained, without costs.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

COWARD, Clerk, against HIGDON.

Somersetshire, 30th May 1677.

EASTER TERM,
29. CAR. 2.

THE bill stated, that the plaintiff had been rector of the parish church of *Ditchett*, in the county of *Somerset*, for seven years past, and had duly officiated the cure there, by reason whereof he ought to receive all manner of tithes, arising within the said parish, according to the custom of tithing corn and grain there growing as described in the bill.

The rector of
Ditchett in *Somersetshire*, claims
tithes according
to a special man-
ner of tithing.

The

COWARD
against
HIGDON.

The defendant confessed the plaintiff to be rector of the parish ; but denied the custom.

The defendant denies the special custom.

The particulars
of the custom
stated,

Upon hearing counsel on both sides, and reading several depositions, and upon debate of the matter ; AND FOR THAT it appears to the Court by the depositions taken on the said plaintiff's behalf, that there is an ancient custom of tithing within the parish of *Ditchbeatt*, that those who have any *wheat* grown in the said parish do reap the same, and afterwards put it into mowes or reekes on the place where it grew ; that the proprietors of the several acres of beans, pease, oats, vetches, and barley, growing within the said parish, are likewise, by the said ancient custom of tithing, to put their beans into stacks, and their pease into heaps, and their oats, vetches, and barley into cocks on the same ground ; that, when they are to carry away the same, and not sooner, they are then to lay out their tithes, being the tenth sheaf of wheat and beans, and the tenth heap of pease, and the tenth cock of oats, vetches, and barley ; that the said tithes being so to be respectively laid out, the several owners of the said corn or grain, for so much of the same as is within the inclosed grounds of the said parish, are to give due notice, to the rector of the said parish, of the time of carrying the said corn or grain, to their respective habitations, to the end the said rector or his servants may see the tithes so laid out and receive them.

Tithes decreed
accordingly.

IT IS THEREUPON ORDERED, ADJUDGED, AND DECREED by the Court, that the defendant, for the future, shall from time to time pay his tithes in pursuance of the said ancient custom of tithing within the said parish, and that the said custom or manner of tithing, within the said parish of *Ditchbeatt*, be and is hereby confirmed.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

TRIN. TERM,
29. CAR. 2.

OFFLEY, D. D. against GLYNN.

Surry, 2d July 1677.

The plaintiff as
rector of *Wor-*
pleston, in *Surry*,
claims the lands
lying on the
south side of the
brook, that runs

THE bill stated, that the plaintiff, for five years past, had been rector of the rectory of *Worpleston*, in the county of *Surry*, and entitled to all tithes, both great and small, arising and renewing within *Henley Park*, in the said parish.

through *Henley Park*, as lying in the said parish.

The

The defendants denied that the lands lying within *Henley Park*, or any part thereof, are within the rectory or parish of *Worpleston*, and that all the said lands lie in the parish of *Asb*, and that they have paid all manner of taxes and assessments to the parish of *Asb*. OVERLY
against
GWYNNE.
The defendant
denies that they
lie in the parish.

A trial at law was directed on this issue, whether all the lands, or any part thereof, and how much thereof, lying in *Henley Park*, on the south side of the brook or rivulet running through the said park, lye in the parish of *Worpleston*, or not? An issue directed to try the fact.

It was thought necessary that the jury should have a view of the lands out of which the tithes in question are demanded; and a view being had, the issue came on to be tried, and upon a long evidence, the jury found that neither the aforesaid lands, or any part thereof, do lie within the said parish of *Worpleston*. The jury have a view and find they are not in the said parish.
13th June 1678.

THE COURT ordered, that the defendant shall be dismissed of and from the said bill, and the matters and things therein contained with very moderate costs, to be taxed by the deputy remembrancer. The defendant dismissed.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.

GWYNNE, Clerk, against SHARPE.

TRIN. TERM,
29. CAR. 2.

Wiltshire, 2d June 1677.

THE plaintiff, as rector of the parish church of *Wilton*, in *Wiltshire*, exhibited his bill, claiming the tithes of *Friars Mead* in kind, and twelve shillings for every yard land in the tithing of *Netherhampton*, in lieu of *small tithes*. The rector of *Wilton*, in *Wiltshire*, claims tithes of *Friars Mead*, and 12s. a yard land in lieu of *small tithes* in the hamlet of *Netherhampton*.

The defendants confessed the plaintiff to be lawful rector of *Wilton*, and entitled to all manner of tithes there, saving the tithes for *Friars Mead*, which mead is tithe free, and except the right of the *Earl of Pembroke* to the great tithes in *Netherhampton*. The defendants say, that *Friars Mead* is tithe free,

The defendant *Sharpe* said, that for nine years past he had been possessed, for the remainder of a term of ninety-nine years determinable upon lives, whereof two are yet in being, of *Friars Mead*, containing four acres, granted to him by *Philip, Earl of Pembroke*; which mead, for four years last past, he had let to the other defendant for thirteen pounds *per annum*, he, the defendant *Sharpe*, allowing one pound, thirteen shillings, and sixpence for *Lord's Rent*, with all rates and taxes, amounting to fifty shillings; and that they hold it under the *Earl of Pembroke*.

GWYNNE
against
SHARPE.

shillings ; that he believed the same was part of some abbey, friary, or religious house, in or near *Wilton* ; and that the same was always tithe free.

The defendant *Brazier* said, that he held *Friars Mead* of the defendant *Sharpe*.

The custom of
tithing in *Nether-*
hampton admit-
ted.

The defendant *Sharpe* further said, that he is owner of a messuage and one yard land in *Netherhampton*, held of the *Earl of Pembroke* by copy of court roll ; and believed there hath been a custom in *Netherhampton*, for every yard land there to pay to the rector of *Wilton* for the time being, in lieu of small tithes, twelve shillings yearly, and so proportionably for a greater or lesser number of lands there. He said, that the same were, for the said time (except the last year) in different persons' possession ; but that he was willing to pay the plaintiff twelve shillings for the said year, according to the said custom.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined.

The cause now came on to be heard ; and on reading several depositions, and on full debate of the matter,

The said yard
land, in lieu of
tithes in *Nether-*
hampton, de-
creed.

IT IS ORDERED BY THE COURT, that the defendant *Sharpe* do forthwith pay to the plaintiff twelve shillings, in lieu and satisfaction for the tithes of the said yard land in *Netherhampton* for the year 1672, when he held the said yard land in his own hands.

And as touching and concerning the tithes of *Friars Mead* for the said years mentioned,

The tithes in
lieu of *Friars*
Mead decreed.

IT IS ORDERED, that the said defendants do respectively satisfy and pay to the plaintiff the values of the tithes of the said mead called *Friars Mead*, for the several years they held the same.

WILLIAM MONTAGU.

TRIN. TERM, TOPHAM, Clerk, against WYMONDSOLD ; et è Contra.
29. CAR. 2.

Lincolnshire, 25th June 1677.

THE VICAR OF
Deeping, in *Lin-*
colnshire, files a
bill against THE
IMPROPRIATOR
for the payment
of all small tithes
in kind ;

THE plaintiff, as vicar of the vicarage of *Deeping Saint James*, otherwise *East Deeping*, in the county of *Lincoln*, by his bill stated, that he was licensed by the *Bishop of Lincoln*, about ten years since, into the parish-church of *Deeping*, and made lawful vicar there ; that during that time he had served the cure, and was thereby entitled to all tithes of wool, lamb, barren cattle, cattle taken in by agistment, and fat cattle sold by the butcher ; of hemp, flax, calves, pigs, geese, eggs, honey, milk, fruit, poultry, and other small tithes ; *Easter* books, dues, duties, offerings, and

and oblations arising within the said parish and the titheable places thereof, and to all compositions in lieu of tithes, sums of money, rates, and payments due and payable, or which have been usually paid to the vicar there; that the said impropriate rectory was parcel heretofore of the *abbey of Thorney* and *priory of Deeping* *Saint James*; that the parish being populous, the cure was served by two priests, who had considerable allowances besides the *small tithes* which of right belong to the vicar or curate; that KING HENRY THE EIGHTH, in the twenty-second year of his reign, granted the said rectory to the *Duke of Norfolk* "as amply as the abbot and prior had granted the same to *Elizabeth Holland*," by which grant all the said tithes, rights, and allowances, belonging to the vicarage were excepted, and have ever since been paid to, or compounded for by, all succeeding vicars officiating the cure there, and ought to be paid to the plaintiff; that the said impropriate rectory being come to the defendants, they pretend that all the tithes of the vicarage do belong to some or one of them, and refuse to pay tithes in kind, or the dues, rates, &c. for their lands, and the titheable matters due from them to the plaintiff. He therefore prayed a full discovery of their titheable matters and things, and the values thereof, and that the defendants might account for and pay the same.

TOPHAM
against
WYMONDSOLD;
et 2 Contra.

stating, that the rectory was parcel of the *abbey of Thorney* and *priory of Deeping*, and granted by King Henry the Eighth to E. Holland, with an exception of all rights belonging to the vicarage.

The defendants denied all knowledge of the plaintiff having been licensed or collated to the said vicarage; but believed the said impropriate rectory was parcel of the possessions of the *abbey of Thorney* and *priory or cell of East Deeping*; that the house and site of the said priory and the said rectory, with all tithes great and small, by the statute of dissolution of abbeys, came to KING HENRY THE EIGHTH, and were by him granted to the *Duke of Norfolk*, in which grant there is no exception or reservation of any tithes or other allowances to the vicar; which said rectory and premises came, by good conveyance, to *William Wymondsoeld*, who settled the same upon *J. Osborne* and others, and their heirs, to the use of the said *William Wymondsoeld* for life, then to the use of *Sir Dawes Wymondsoeld*, and after his decease to the use of the defendant *Dame Jane Wymondsoeld* for life, for her jointure, and after her decease, to the first and second sons, and all other sons, of *Sir Dawes* in tail, with other remainders; that *twenty nobles* a year were paid to the vicar during the life of *William Wymondsoeld*; and after the rectory came to *Sir Dawes Wymondsoeld*, he, of his free gift, increased it fifteen pounds, and sometimes more, which was paid to the vicar during his life; that the said payment was afterwards continued by the defendant *Dame Jane Wymondsoeld* until the plaintiff insisted upon it as his right; whereupon she did forbear to pay the said fifteen pounds a year, for half-a-year ending at *Michaelmas* 1675; but tendered the said half-year's pay at the rate of *twenty nobles* a-year, which

The impropriator states, that King Henry the Eighth granted the rectory to the *Duke of Norfolk*, without any reservation for, or allowance to, the vicar;

and deduces the same by mesne conveyances from the *Duke of Norfolk* to himself,

stating, that they had paid certain sums gratuitously to the vicar, but denying his right thereto;

she

TOPHAM
against
WYMONDSOLD;
et al. Comrs.

and also denying
that they either
lived or held any
lands in the pa-
rish.

she is still ready to pay. The defendants denied that they either lived in the parish, or that they held any lands therein, or had any titheable matters within the same, since the plaintiff had been vicar, or that they had paid any money in lieu of tithes, or ever heard of any being paid, other than as aforesaid; and stated, that the defendant *Dame Jane Wymondfold* claimed all the tithes and rights of the said rectory as belonging to her during her life; and denied all knowledge of any *modus* or composition other than the twenty nobles a-year.

The plaintiff replied generally.

The defendants
file a *cross bill*,
stating their ri-
ghts, and that the
vicarage is only
endowed with a
house, land, and
twenty nobles a-
year.

The defendants filed their cross bill, stating their title to the rectory impropriate, and church of *Deeping*, with the rights, glebes, tithes, oblations, and profits thereto belonging; that the defendant knew the tithe rates and customary payments belonging to the said rectory to have been always received by the impropriators and their lessees; and that the vicarage is endowed with a house, orchard, garden, some land, and twenty nobles a-year: and they prayed a discovery in the premises.

The vicar con-
fesses the im-
propriators have
always received
the tithes, both
great and small,

but denies all
knowledge of
the said endow-
ment.

The vicar confessed the plaintiffs were seised of the rectory, and had received the great and small tithes; but knew not by what right they have so done. He confessed the endowment of the vicarage, and that he was licensed in the year 1668, and collated by the bishop in the year 1675; that he had forbidden the inhabitants and parishioners of *Deeping* to pay any small tithes and offerings to *Lady Wymondfold* or her agents; and that he had taken the profits of the vicarage-house and lands since he served the cure there. He said, that he knew of no endowment but that made by the bishop in the year 1609, saving that he hath seen an *ancient book* in the priory-house at *Deeping*, purporting something of an endowment, but remembered not the contents.

The plaintiff replied; and both the causes being at issue, witnesses were examined.

Upon opening the bills and answers, and reading the depositions on both sides, and a lease made by *David*, heretofore *Abbot of Thorney*, to *Elizabeth Holland*, of the demesnes of the priory of *Saint James in Deeping* (being an appendix to the *abbey of Thorney*), to which priory the said rectory of *Saint James Deeping*, with the advowson, was appropriate; by which lease there is also granted to the said *Elizabeth Holland* the said rectory, and all tithes, oblations, and other profits, and there is only reserved to the said vicar a pension of six pounds, thirteen shillings, and fourpence; and upon reading a copy of a record in the reign of KING HENRY THE EIGHTH of the survey of the said priory, and of the rents and charges issuing out thereof, wherein there is also reserved to the said vicar the said six pounds, thirteen shillings, and fourpence,

On reading a
lease to E. Hol-
land,

and a survey of
the priory,

pence, and no more; and also an *inspeximus* of a patent made the ninth of July, in the thirty-second year of Henry the Eighth, whereby the said king granted to the Duke of Norfolk the reversion of the demesnes of the said priory and rectory, reserving only twenty nobles a-year to the vicar; and upon full debate of the matters aforesaid;

TOPHAM
against
WYMONDSLOE;
et c. Contra.

and an *inspeximus*
of King Henry's
patent to the
Duke of Norfolk,

THIS COURT doth declare, that they do not see any cause to relieve the said plaintiff Topham upon any of the matters by him complained of in his bill.

the Court de-
clares the vicar
not entitled,

IT IS THEREUPON FINALLY ORDERED AND ADJUDGED by the Court, that the defendants in the original cause be, and are hereby dismissed this court of and from the said bill, and the matters and things therein contained.

and dismisses the
defendant,

And for that in the cross bill exhibited there is not any matter of relief prayed whereupon the Court may proceed to make any decree,

no relief being
prayed by the
cross bill.

IT IS THEREFORE FURTHER ORDERED, that the cross bill be and is likewise dismissed.

And costs, on both the said causes, are spared on either side.

WM. MONTAGU.

TIM. LYTTLETON,

EDW. THURLAND.

VERE BERTIE.

CLARKE against SUNDERLAND and Others.

Yorkshire, 11th February 1677.

HILARY TERM
29. CAR. 2.

THE bill stated, that the plaintiff was farmer of the rectory of South Cave, in the county of York, and that he was entitled to all manner of tithes due to the rector, and particularly to the tithes of corn, grain, hay, wool and lamb, as well as of other sorts of tithes.

The plaintiff
claims the tithes
of South Cave, in
the county of
York.

The defendants stated, that they held divers lands in the parish of South Cave which were not parcel of the manor of Bromfleete; and that for those lands they had duly paid their tithes to the plaintiff; and that they also held, as tenants, several other lands within the said rectory which are parcel of the manor of Bromfleete, which was parcel of the late dissolved monastery of Saint Leonard, in the said county, and which lands and tenements have, time out of mind, been held discharged from tithes.

The defendants
plead payments
of tithes of the
lands in South
Cave which were
not parcel of the
manor of Brom-
fleete.

An issue was directed to try, "whether the lands and tenements held by the defendants, which are parcel of the manor of Bromfleete, in the said county, have been, by prescription time out of mind, and now are, and ought to be, discharged from the payment of all manner of tithes to the rector of the rectory of South Cave? whether they be in the owner's, or in the tenant's hands?"

An issue directed
to try, whether
the lands in South
Cave which are
parcel of the ma-
nor of Bromfleete
are discharged of
tithes.

A trial

CLARKE
against
SUNDERLAND
AND OTHERS.

A trial was accordingly had, and a verdict passed for the defendants.

14th May 1678. And a verdict being found for the defendants,

they are dismissed.

THE COURT therefore ordered and adjudged, that the defendants shall be, and hereby are absolutely dismissed this court of and from the said bill, and the matters and things therein contained ; and that costs on both sides shall be paid, according to the course of the court.

WILLIAM MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
VERE BERTIE.

EASTER TERM
30. CAR. 2.

SILVERLOCKE, Clerk, against ISLES.

Essex, 29th April 1678.

A custom to pay
“ every tenth
“ day’s milk
“ from the first
“ of May to the
“ first of August
“ yearly, in lieu
“ of all tithe
“ milk through-
“ out the year,”
is bad.

THE bill was filed to discover what lands the defendant occupied within the parish of *Tilbury*, in the county of *Essex*, and to have satisfaction for the tithes of the milk of cows depastured thereon.

The defendant insisted upon a custom within the parish of *West Tilbury*, “ that the inhabitants there ought to pay for tithe milk every tenth day’s milk or tenth meal’s milk from the first day of *May* to the first day of *August* following yearly, in full of all tithe milk throughout the year.”

THE COURT was of opinion, that the custom is illegal ; and therefore ordered, that the defendant shall pay to the plaintiff his tithe milk throughout the whole year, or the value thereof.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
FR. BRAMSTON.

EASTER TERM
30. CAR. 2.

PERNE, Clerk, against STYLES, Clerk (a).

Lincolnshire, 22d April 1678.

The bill states, that *William* and *Robert*, being jointly seised in fee of the advowson of *Crowland*, and the church being

THE bill stated, that *Robert Chapman*, clerk, was seised in fee of the advowson of the church of *Crowland*, in the county of *Lincoln*, and of the rectory impropriate, and of the tithes in the parish of *Crowland*, in the said county ; that he had issue *Grace Richmond* and *Susan Southwell* ; that *Grace Richmond*, the eldest sister, died ; whereupon one moiety of the advowson and impropriation void, presented the plaintiff to the cure thereof, and afterwards conveyed their interests in the same to the defendants *Wildbore*, *Southwell*, and *Hawkins*, in trust for the plaintiff, and his successors in the said cure ; and therefore the plaintiff claims the tithes thereof.

(a) See *Perne v. Oldfield*, 2. Chan. Cases, 32. S. C. Raym. 60.

propriation descended to *William*, her son and heir ; that *Susan Southwell* died, whereupon the other moiety descended to *Robert*, her son and heir ; that, they being seised, and the church being void, they presented the plaintiff ; that *Robert* having a desire to settle his moiety in trust for the plaintiff, and for those that should succeed him in the cure of the said church, did, by indenture dated the first of *August* 1671, grant his moiety to the defendants *Wildbore* and *Southwell*, and to their heirs, for the parsons and curates of the said church, and their successors, for ever ; that *William* did, by like indenture dated the twentieth of *October* 1672, convey his moiety to the defendants *Southwell* and *Hawkins*, and their heirs, in trust for the plaintiff, being legally presented and inducted, and the succeeding ministers of the said church ; whereby the plaintiff became entitled, and ought to enjoy the same ; that the plaintiff, upon occasion of opposition, hath been several times put into possession by the *posse comitatus* ; but that the defendants *Southwell*, *Wildbore*, and *Hawkins*, by multiplicity of suits and threats, compelled several of the parishioners to pay them the tithes, whereas in truth they had no title at all since the twenty-sixth of *December* 1672 ; that several of the defendants had occupied lands in the said parish, but refused to pay the tithes to the plaintiff. To the end, therefore, that the defendants, the parishioners, might discover what tithes they had, or what lands they occupied since the twenty-sixth of *December* 1672, or since the plaintiff's title accrued, and that the plaintiff might be relieved in the premises, the bill was filed.

PERNE
against
STYLES,

The defendant *Styles* put in his plea and answer, and died before the cause was brought to an issue.

The defendant *Kendall* put in his plea, which, upon argument, was over-ruled, and he was ordered to answer.

The defendants *the parishioners* answered, and confessed the plaintiff's presentation from *Southwell* and *Richmond*, and their conveyances in trust for the plaintiff's use ; but they alledged, that he had no title to any of the tithes he pretended to ; FOR THAT the rectory is *impropriate*, and no tithes belonging thereto, but only oblations, mortuaries, funerals, and christenings ; the other tithes being due to the rectors, who had used, at their own charge, to find a chaplain, who was licensed by the bishop, and admitted to it for his life in the nature of a *donative* ; that, under this qualification, the defendant *Styles* was in ; and therefore the plaintiff's institution and induction void ; as also the grants of *Southwell* and *Richmond*. They therefore set forth their respective *small tithes*, but not their predial tithes. They further answered, and said, that the presentation to the plaintiff was void by reason of *simony*, because the defendant *Styles* was, at the time of such presentation, curate or incumbent. They admitted, that

The defendants say, that *Crowland* is a rectory impropriate, and that the tithes belong to the impropriator, who is to find a chaplain ; and that he gave the same to one *Seiles* in the nature of a *donative* ; so that the presentation to the plaintiff was void, and simoniacal, the church being then full.

PERNE
against
STYLES.

But they admitted the grant in trust for the plaintiff and his successors, but said it was intended to be by virtue of the 17. Car. 2. c. 3. ;

that the lands of the manor belonged to the abbot of Crowland, a mitred abbot ;

and that at the time of the dissolution of monasteries the said abbot was seised of the abbey, and of the said manor,

the lands of which were discharged of tithes by unity of possession.

The defendant *Randall* confesses holding lands in *Postland*.

The plaintiff replies, that the impropriator settled the rectory on him and his successors.

Richmond and *Southwell* granted their several moieties in trust for the plaintiff; and said, that the same was intended to be by virtue of the statute 17. Car. 2. c. 3. which only extended to cities and towns corporate, which *Crowland* was not, and therefore the grant was void; that the manor of *Crowland*, and the rectory thereof, heretofore did belong to the abbot of *Crowland*, who was a mitred abbot, and that his abbey, one of the great monasteries, was dissolved by the statute 31. Hen. 8. c. 13. ; that the said manor consisted of very great demesnes, wastes, and services, several of which demesnes and wastes were granted to several copyholders and other tenants, under whom these defendants respectively claim; that the said abbot, and all those whose estates he had in the said manor, from the time whereof the memory of man is not to the contrary, for themselves and their said tenants, had been respectively discharged of all predial and mixed tithes arising and renewing within the said manor, except the tithes particularly mentioned in their answer; that in consideration thereof the said abbot did, at his own charges, build a chapel, and found a priest to celebrate divine service there, who yearly had the following tithes, viz. oblations, burials, christenings, tithes of hogs, geese, milk, and marriages; that the said abbot of *Crowland* was, at the time of the dissolution, seised of the said abbey, the site whereof consisted in a fair abbey-house, with a chapel thereunto adjoining, which was parcel of the said monastery, and of four hundred acres of marsh, surrounded with water, which were in the said abbot's hands at the time of the dissolution; that the rectory, time out of mind, had been in the possession or occupation of the predecessors of the said abbot; that it coming to the crown by the 31. Hen. 8. c. 13. the same descended to KING EDWARD THE SIXTH, who sold the same to the *Lord Clinton and Say*; and that from him, by mesne conveyances, the same was come to *F. Wingfield*, whose estate herein was claimed to be discharged of all payments of tithes by reason of the said unity of possession, or by prescription time out of mind, or by some other lawful ways and means.

The defendants *Randall* and others confessed, that in 1673, 1674, and 1675, they held lands in *Alderlands*, and also in *Postland*, within the said parish, for which they paid no tithes to the plaintiff.

The plaintiff replied specially, and said, that by the statute of the 17. Car. 2. c. 3. the owners of the impropriation and tithes settled the same in trust for the curates, parsons, or vicars of the said parish successively; that thereby, or by other good title, the plaintiff, for the time in the bill mentioned, was entitled to the tithes in the said parish; and that the lands in the defendants possessions were liable to pay tithes in kind.

Issue being joined, witnesses were examined on both sides; and upon hearing counsel on both sides, and upon much debate

of the matter in question, the Court was fully satisfied, that the church of *Crowland* is not *presentative*, nor the matter capable of *simony*; and that therefore the plaintiff cannot be guilty of *simony*, as is alledged against him, but that he hath made forth a good title to such tithes of the said parish as ought to be paid. *presentative*, and therefore the plaintiff's induction no *simony*.

PERNE
against
STYLES.

The Court of o-
pinion, that the
church is not

But inasmuch as the defendant's counsel insisted, that the *demesne lands* of the said manor of *Crowland* were discharged from payment of tithes; and it appearing to the Court, by the defendant's proofs, that the lands in *Postland*, in the said parish, are the *demesne lands* of the said manor, the Court ordered a trial *at law* on the following issue, "Whether the *abbot of Crowland*, at the time of the dissolution of the said abbey, in the thirty-first year of *King Henry the Eighth*, and all his predecessors abbots of the said abbey, time out of mind, held the said lands called *Pusant*, otherwise *Postlands*, freed and discharged from payment of any manner of tithes?" to be tried by a special jury in an action on the statute 2. & 3. *Edw. 6. c. 13.*; the defendants to admit the plaintiff to be rightful incumbent of *Crowland*, and to admit his title to the same, and agree a value; the action to be brought against one defendant, and the rest who hold any *demesne lands* in the said parish, to be concluded by the said trial; and the equity of the cause, as to the *demesne lands*, to be reserved till after the trial.

But an issue is
directed to try,
whether the ab-
bot held the
lands called
Postlands freed
from tithe.

And as to all the other lands, except *Postlands*, within the said parish, held by the defendants *Kendall* and *Hampson*, in regard it no ways appeared to the Court that the same are *demesne lands*.

The tithes of all
the other lands
decreed to the
plaintiff.

THE COURT ordered the defendants to pay to the plaintiff the value of the tithes of the said lands.

A trial was accordingly had against the defendant *S. Kendall*, upon the statute of *Edward the Sixth*, for not setting forth his tithes of the *demesne lands* in his possession; and after long evidence on both sides, a verdict was given for the plaintiff.

A verdict is
given for the
plaintiff.

Now, upon hearing, the plaintiff's counsel desiring that the plaintiff might have a decree for the tithes in question; and upon reading the return of the *posse*; and the defendant's counsel insisting that the defendant *Styles* (who died since the commencement of the suit) was lawful curate of the said parish, and continued so until his death, and thereby was entitled to the tithes of the said parish, all which was made to appear to the court by the defendant *Styles*'s answer; and by reading of a licence granted to the said *Styles* from the vicar-general; and that accordingly he enjoyed the same; and also that the plaintiff had not produced any particular licence to serve

The Court de-
clare, that *Styles*
had no title to
any of the tithes,

PRERE
against
STYLES.

the said cure, otherwise than what is mentioned in an instrument of admission grounded upon a presentation granted to the plaintiff, which was declared to be void as such ; and that, for that reason, the bill ought to be dismissed, as the defendant's counsel did insist.

THE COURT, upon a deliberate hearing touching the aforesaid matter ; and upon a serious and solemn debate thereon ; and upon reading the instruments whereby the plaintiff claims, as curate or incumbent of the parish-church of *Crowland*, DO UNANIMOUSLY DECLARE, that the said *W. Styles*, clerk, has no title to any of the tithes of the said parish of *Crowland* for and during any of the time for which the plaintiff, by his bill, seeks a discovery ; but that the plaintiff hath a good title to the same for and during all the said time.

but the defend-
ants to be allow-
ed the amount
of the tithe they
paid to *Styles* ;

But inasmuch as the said *Styles* pretended a title to the same tithes, and the defendant's counsel alledged that they had paid some of their tithes to him,

THE COURT, by and with the consent of the plaintiff, do order that they shall be allowed what tithes they shall make appear to have been actually paid to him, or any composition for the same, in his life-time,

but a new trial
is granted, as to
the *demefne lands*,

And inasmuch as the defendant's counsel prayed another trial concerning the defendants being discharged from the payment of tithes for their said *demefne lands* ; and the Court taking into consideration the great value of the tithes of the said *demefne lands*, and not out of any dislike of the verdict obtained, ordered, that a trial shall be had at the bar of this court between the plaintiff and the defendant *Kendall* ; the issue to be, " whether

to try, whether
they are dis-
charged from
tithes ;

" the demefne lands of the manor of *Crowland*, and whereof
" the defendant *Kendall* held part during the years in the bill
" mentioned, are, and ought to be, legally freed and discharged
" from the payment of all tithes, or not ?" and at the said trial the defendant is to admit the plaintiff to be rightful incumbent of *Crowland*, and duly entitled to all such tithes as are due and payable for the said demefne lands of the manor during the time in the bill mentioned ; and if a verdict shall pass for the plaintiff, all the defendants who hold *demefne lands* are to be bound by the same : to be tried by a special jury of the county of *Middlesex*.

and all the de-
fendants to be
bound by the
verdict,

and to pay the
jury, the plain-
tiff being a pau-
per,

and also his
taxed costs.

And it is further ordered by the Court, by consent of the defendants, that they are to pay the jury (the plaintiff being a pauper), whether the verdict be for or against them ; and they are to pay the plaintiff his taxed costs of the last trial ; and in case they do not pay the same, then the aforesaid trial shall not be had ; but this cause shall be determined without any other trial.

A trial

A trial was accordingly had, and a verdict passed for the defendants; and on the fifth day of *July* instant, the plaintiff's counsel moved for a *new trial*; but the Court thought fit to make no order: and now, on the tenth of *July* 1679, upon hearing counsel, and reading the plaintiff's affidavit, a *new trial* being a second time prayed,

PERNE
against
STYLES,

A verdict found for the defendants, that the *demise lands* are tithe free.

THE COURT declared, they saw no cause for a new trial, and refused the application.

A new trial moved for, but refused.

BULL *against* MELLIER and COLLIER.

EASTER TERM
30. CAR. 2.

Somersetshire, 6th May 1678.

THE plaintiff was owner and impropriator of the rectory of *Murlinch*, in the county of *Somerset*, and of the great and small tithes within the villages of *Murlinch*, *Calcott*, *Eddington*, *Gbelton*, *Sutton*, and *Stowell*, in the said parish.

The impropriator of the rectory of *Murlinch*, in the county of *Somerset*, is entitled to the tithes of hay made in the village of *Eddington*, except that which is made on *Ancient Meadow* and on *Stock Meadow*.

The defendant *Collier* was vicar of the vicarage of *Murlinch*.

The scope of the bill was, to compel the defendant *Mellier* to discover the number of acres of meadow and hay ground he had held during the last four years within the said rectory, and the quantities of hay he had mowed there from any ground not being ancient meadow, commonly called *Ancient Meadow*, and *Stock Meadow*.

The defendant *Mellier* confessed himself to be an occupier of meadow ground within the village of *Eddington*; and denied that he had any tithe hay there due to the impropriator, except some small wet pieces of ground called *the Suggs*, lying in the open fields; but said, that for all the meadow ground lying between the *East* and *West Lands* twopence an acre hath been anciently paid to the vicar there, in lieu of all the tithe hay there; and that for all other meadow ground, either ancient meadow, or formerly arable and now made meadow, or mowing ground; the customary rate or payment of one penny an acre hath been and is due and payable to the vicar of the said vicarage, for and in lieu of all tithe hay arising therefrom; and he set forth the quantities and values of French or clover grass, and of the natural grass.

A *modus* set up.

The defendant *Collier* set forth, that he was vicar of the said vicarage, and entitled to the several *moduses* of one penny and twopence an acre for the ancient meadow in *Murlinch*, *Sutton*, and *Stowell*, but not in *Calcott*, *Eddington*, and *Gbelton*; and denied any custom of paying to the vicar there any rate or *modus* for

The vicar claims the tithe.

BULL
against
MELLIER.

any new made meadow, or any hay in kind in *Eddington*, or any composition for new made meadow there; and said, that he had agreed with the other defendant for his vicarial tithes; but denied that it was expressed or intended that any tithe hay or *modus* of any new made meadow was or should be included therein.

An issue directed.

The plaintiff replied; and issue being joined, several witnesses were examined on both sides; and upon hearing counsel for all parties; and reading several depositions on behalf of the plaintiff and the defendant *Mellier*; and on debate of the matter; THE COURT ordered a *trial at law*; the issue to be, "whether, by custom within the said parish of *Mur-*
" *linch*, all the occupiers of lands and tenements within the
" said village of *Eddington* have, time out of mind, paid, or
" of right ought to pay, to the vicar of the vicarage of *Mur-*
" *linch* for the time being his farmers, or tenants, the yearly
" sum of one penny an acre for, and in lieu, satisfaction, and
" discharge of, all manner of tithe of grass made into hay, and
" other tithes due to the vicar and impropriator there, yearly
" arising from all and every the meadows and mowing grounds,
" and other grounds within the said village of *Eddington*, as well
" ancient meadow as ground made at any time, or converted
" from arable or pasture into meadow, or mowing ground, and
" other grounds there, except the small pieces of ground called
" *the Suggs*, and the meadow or mowing grounds in *Eddington*,
" lying between the two lands there called the *East* and *West*
" *Lands*; and so after that rate for a greater or lesser quan-
" tity?"

A verdict for
the plaintiff.

A trial was accordingly had; and the plaintiff obtained a verdict.

11th Nov. 1678.
Tithes in kind
decreed to the
impropriator.

THE COURT therefore ordered, that the defendant *Mellier* do pay to the plaintiff, as impropriator of the said rectory of *Murlinch*, the tithe hay in kind, or the value thereof, for the several quantities of hay risen or gained from all and every the meadows and mowing grounds, and other grounds within the village of *Eddington*, at any time made or converted from arable or pasture into meadow or mowing grounds (other than and except *Ancient Meadow* and *Stock Meadow*) occupied and enjoyed by the said defendant in the said years.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.
FR. BRAMSTON.

ASFORDEY

ASFORDBY, Clerk, *against* NEWCOMEN.TRIN. TERM,
30. CAR. 2.*Lincolnshire, 6th June 1678.*

THE plaintiff stated, that for twelve years past he had been The rector of *Mablethorpe*, in *Lincolnshire*, demands the tithes of pasture grounds.
 rector of the parish-church of *Mablethorpe Saint Mary cum Staine*, in the county of *Lincoln*, and was entitled to all tithes within the said parish.

The defendant set forth, that, for the said time, he had been occupier of several acres of pasture ground in the said parish, and had kept thereon sheep and other cattle; but that, for all the time aforesaid, he dwelt in *Salstetby*, and not in *Mablethorpe*; and that there was a particular custom of tithing in *Mablethorpe*.
 The defendant confesses that he holds pastures in the parish, but says, that he dwells out of it; and states a *modus*.

Two issues were directed, to try,

FIRST, Whether, by custom in *Mablethorpe*, all farmers of lands within the said parish, living out of the said parish, ought to pay to the rector there for the time being, fourpence an acre, or any other sum or sums of money, and how much, for every acre of pasture ground, in full and satisfaction of all tithes yearly coming, happening, or renewing, within the said parish, to be paid yearly upon every first day of *August*?
 An issue directed to try, whether there exists a *modus* of fourpence an acre, payable on the first of *August*, in lieu of tithes;

SECONDLY, How much new converted ground, and how much ancient pasture, the said defendant occupied within the said parish of *Mablethorpe* in every of the said twelve years?
 and to find how much ancient pasture the defendant held.

A trial was had; and the jury found, that the said defendant held and occupied, in the said parish of *Mablethorpe*, in every of the said twelve years, one hundred and seventy-seven acres, namely, one hundred and forty-eight acres of ancient pasture, and twenty-nine acres of new-converted ground; and that the custom is to pay fourpence a-year for every acre of ancient pasture, when the same remain pasture lands, and twelvecpence for every acre of new-converted ground.
 22d May 1679. A verdict partly for the plaintiff, and partly for the defendant.

THE COURT, therefore, ordered the defendant to pay to the plaintiff fourpence an acre *per annum* for every acre of ancient pasture by him held and occupied in the said parish of *Mablethorpe* in every of the said twelve years; and also twelvecpence an acre *per annum* for every acre of new-converted ground for the said time; which said several sums being computed in court amount to forty-seven pounds; and the plaintiff is to allow the defendant twelve pounds, four shillings, and fourpence, paid him thereout; therefore there remains due to the plaintiff thirty-four pounds, fifteen shillings, and eightpence.
 Tithes decreed.

And it is further ordered by the Court, that the plaintiff shall have his costs in this suit, except for the former decree, and
 Costs. Ante, 166.

ASFORDEY
against
NEWCOMEN.

except costs for the trial at law, which are to be set one against the other, the said verdict being partly for the plaintiff and partly for the defendant.

WM. MONTAGU.
THO. RAYMOND.
EDW. ATKINS.

TRIN. TERM,
30. CAR. 2.

PEARSE *against* BENNETT.

Wiltshire, 13th June 1678.

The plaintiff claims the tithes of *Norton Farm*, in the parish of *Norton Bavant*, in the county of *Wilt.* **T**HE scope of the bill was to be relieved for tithes due to the plaintiffs, as owners and proprietors of the rectory of *Norton Bavant*, in *Wiltshire*, out of a farm and several hundred acres of land and meadow within the said parish, for five years past.

The defendant says, the farm was parcel of *Dartford Abbey*, in the county of *Kent*, and held by the abbot discharged of tithes at the time it was dissolved.

The defendant said, that she is owner of the farm called *Norton Farm*, consisting of several hundred acres of arable, pasture, and meadow ; that the said farm and lands were heretofore parcel of the monastery of *Dartford*, in the county of *Kent* ; and that, by the statute of the thirty-first year of *Henry the Eighth* they came to the crown ; that the abbot of the said monastery, and his predecessors, at the time of the dissolution of the said monastery, held the said farm and lands discharged of tithes ; that the late KING JAMES, by his letters patents dated the twenty-sixth of *November*, in the seventh year of his reign, granted the same to *G. Salter* and *John Williams*, and their heirs ; and that the same are, by good conveyances, come to the defendant for life ; that KING HENRY THE EIGHTH, and all other persons under whom she claims, have holden the same discharged of tithes.

Now upon opening the pleadings, and hearing counsel on both sides ; and upon long debate of the matter ;

A trial ordered on 2. & 3. Edw. 6. c. 13. in which the defendant is to plead the statute 31. Hen. 8. c. 13.

The Court ordered a *trial at law* in an action upon the statute 2. *Edw.* 6. c. 13. for the not setting forth of tithes ; the defendant to admit the plaintiff's title to the rectory under the letters patents, and insist upon any discharge to exempt her from payment of tithes, or that the said tithes did not pass by the said grant ; but no lease in being of the said tithes is to be insisted on by the defendant.

21st Nov. 1678. The plaintiff non-suited for not having taken out the *non obstantes*.

A trial was had ; but the plaintiffs, who produced a copy of part of the said letters patents, but had omitted to take out the *non obstantes* therein, were, for want thereof, nonsuited ; but a *new trial* was granted upon payment of the costs of the last trial.

A new trial granted on payment of costs.

A new

A new trial was accordingly had, and a verdict was given for the defendant ; and now upon hearing the plaintiff's counsel, praying another new trial, on the allegation that the verdict was given for the defendants, contrary to the expectation of the judge before whom the cause was tried ; and, after hearing the defendant's counsel, a new trial was ordered, upon payment of *good costs* for the last trial ; and that this shall be final to the plaintiffs : to be tried by a special jury.

PEARCE
against
BENNETT.

26th June 1679.
A verdict given
for the defend-
ants ; and a
third trial order-
ed on payment
of *good costs*.

Pursuant to which last order a trial was had ; and upon long and full evidence, a verdict passed for the defendant.

Verdict for the
defendant.

The cause coming this day to receive a final hearing,

27th Nov. 1679.

The Court, after much debate of the matter, the plaintiff's counsel insisting upon a new trial, ordered, that the defendant shall be, and is hereby absolutely dismissed of and from the said bill, and the matters and things therein contained.

Another trial
refused.
The defendant
dismissed.

WM. MONTAGU.
THO. RAYMOND.
EDW. ARKINS.

DAVIS, Clerk, *against* TUTTON.

Somersetshire, 10th June 1678.

TRIN. TERM,
30. CAR. 2.

THE bill stated, that for five years past, the plaintiff had been vicar of the vicarage of *Wedmore*, in the county of *Somerset*, and was duly instituted and inducted thereto, and performed the cure there ; that he was thereby legally entitled to receive the profits of the glebe lands, and all tithes of calves, honey, wax, geese, cows, pigs, orchards, and all other *small tithes*, offerings, oblations, and obventions whatsoever, yearly arising therein, and the titheable places thereof ; that within the said parish there hath been a custom, time out of mind, that every parishioner who has calves fallen within the parish to the number of seven, eight, nine, or ten, in any one year, shall give one calf to the vicar for his tithe thereof ; and that if the number be under seven, then the parishioner shall pay nothing for the fall thereof in that year, unless he had compounded with the vicar for the same ; that the vicar had the liberty and benefit, by the said custom, to drive the same, and put off the receipt and benefit (the number of the said calves being under seven) until the next or following years, until such parishioner had ten calves in the whole, or so many as ought to yield the vicar one calf ; and then such parishioner is to account with and pay to the vicar the tenth calf *in kind* ; and so after the same rate for any number of calves above ten, according to the same proportions.

The vicar of
Wedmore, in *So-*
mersetshire, claims
the tithes of
calves according
to a particular
manner of tith-
ing.

The custom
stated.

The

DAVIS
against
TUTTON.

The defendants
deny the custom
as stated, and
allege a different
custom of
paying the tithe
of calves.

The defendants denied the custom, as stated in the bill ; and said, that the custom is, and so hath been time out of mind, that every parishioner who has seven, eight, nine, or ten calves fallen within the said parish in one year ought to pay to the vicar one of the said calves for his tithes thereof ; but that if he had under seven calves in one year fallen, then he ought to pay to the vicar one halfpenny for the tithe of each calf so fallen in one year that is weaned ; but that if the parishioner sell any of the said calves, then the said vicar is to have, by the said custom, the tenth penny of what the said calf or calves are sold for ; and that in case the calves fall in one year under the number of seven, and the same should be killed by the owner thereof, the vicar, by the said custom, is to have the left shoulder of the calf so killed, or fourpence, at the election of the vicar, in lieu of the tithe thereof.

The Court, on
inspecting the
tithe books, is
satisfied of the
custom, as stated
in the bill.

Upon opening the pleadings, and reading several depositions, *the tithe book*, and divers ancient tithe books of the former vicars there, and upon long debate of the said custom of tithing of calves within the said parish of *Wedmore*, it fully appeared, and was proved to the Court, that the custom for tithing of calves, within the said parish of *Wedmore*, hath been, and is as in the bill is set forth.

The defendants
ordered to pay
tithes accord-
ingly.

IT IS THEREFORE ORDERED BY THE COURT, that every of the defendants that hath had any calves fallen within the said parish shall pay tithes for the same, according to the custom stated in the bill ; which said custom is hereby ratified and confirmed to all intents and purposes whatsoever. The defendants to pay moderate taxed costs in respect of the said customs.

WM. MONTAGU.
TIM. LITTLETON.
EDW. THURLAND.

MICH. TERM,
30. CAR. 2.

WAUGH, Clerk, against GREENWOOD.

Yorkshire, 25th November 1678.

The vicar of
Darrington, in
Yorkshire, claims
the tithe of the
township of *Sta-
pleton*, and of
Holgate Farm,
within the said
parish.

THE bill stated, that the plaintiff and his predecessors, vicars of *Darrington*, in the county of *York*, have, time out of mind, enjoyed all tithes of hay and corn in kind ; that for twenty years past he hath had the tithes in kind of all corn, grain, and hay, arising therein ; that the defendant, for five years past, was owner of several lands in *Stapleton*, within the said vicarage, and of *Holgate Farm*, and had sown the same with corn, and mowed hay, and kept many cows and sheep which had calves and lambs, whereof the plaintiff ought to have had tithes in kind, worth four pounds *per annum* ; which he refused to pay, under several pretences.

The

The defendant denied that he or his predecessors ever had any tithe of corn and hay, or that there was any *modus* for the same within the townships of *Darrington* or *Wentbridge*; for that *the archbishop* was owner of the same there, and that *G. Holgate* had a lease of the tithe of corn there for three lives, except the deanery tithes, which were leased to *J. Holgate*; and that *R. Cookson* had a lease for all tithe hay within the vicarage of *Darrington*; and he stated, that there were lands in *Darrington*, called *the Demefne Lands*, that paid for the tithe of corn the thirtieth shock, to the said *G. Holgate*; that the plaintiff had received the privy tithes in kind, or the value thereof; that, for five years past, he had been owner of lands in *Stapleton*, and of *Holgate Farm*, and had sown the same with several sorts of grain; and for the said five years he set forth the quantities and values of the corn he had sown on fifteen acres of *Demefne Lands* in *Stapleton Manor*; and that for that time he had paid to the plaintiff, or his lessee, the thirtieth shock, being his tithe in kind. He also set forth the quantity and value of the hay he had on his lands in the said years, for which, he said, the plaintiff had received one shilling and sixpence *per annum*, as a *modus* for the same; and that never any tithe hay was paid in kind; that in the said years he had not any cows; but he set forth the number of sheep, for which he satisfied the plaintiff in money for the tithe; and the quantities and values of the corn and grain he had sowed on *Holgate Farm* during the said time; and also what quantity of hay he had thereon, and the value, for which corn and hay he paid the plaintiff fourpence *per annum*, in full satisfaction, according to the *modus* there; that he had obtained a verdict at the common law in an action commenced by the plaintiff for the said tithes; and that he was not any ways indebted to the plaintiff for any customary payments, or other things demanded by bill.

WAUGH
against
GREENWOOD.
The defendant states, that the tithes of *Darrington* were leased to *T. Holgate*, to whom he had paid the thirtieth shock in lieu of tithes; that he was owner of lands in *Stapleton*, and of *Holgate Farm*; and that he had paid the vicar the thirtieth shock, &c.; and states a *modus* of 18d. a-year, in lieu of tithe hay;

and a verdict in his favour in an action at law.

The plaintiff replied, that as to the corn and grain grown upon the lands called *the Demefne Lands* belonging to the manor-house of *Stapleton*, called *Stapleton Hall*, in the answer mentioned, he had received, during the said years, the thirtieth shock of the said several sorts of grain, but received not the same in full satisfaction of the tithes of the said corn and grain sown upon the said *Demefne Lands*, nor was there ever any agreement between him and the defendant so to accept the same, but for his present subsistence was forced to take what he could get, and therefore took the same *de bene esse* until he could seek the further aid of this court to be restored to the residue, hoping thereby he was not stopped or concluded to demand his full tenths of the said corn and grain, as, time out of mind, had been paid, and of common right was due; and that if the defendant should prove the custom of paying the thirtieth shock in discharge of the full tithes of the said corn and grain, the contrary whereof the plaintiff hoped he should prove, the said custom or prescription

The plaintiff acknowledges the receiving the thirtieth shock, but denies it was in full satisfaction of his tithes.

was

WAUGH was unreasonable, and wholly insufficient to bar him of his demand of full tithes in kind of the said corn and grain.
against
GREENWOOD.

The matters read in evidence. Upon hearing counsel on both sides ; and upon long debate ; and upon producing an exemplification of a verdict obtained by the defendant at common law in an action commenced by the plaintiff for the tithes for two of the years in question ; the defendant's counsel alledging to the Court, that it was fully in proof in the cause, that the plaintiff had right only to the thirtieth sheaf of corn arising from *the Demefne Lands of Stapleton* ; and likewise, that the said plaintiff had right only to eighteen pence *per annum* as a *modus* for all tithe hay arising from the said *Demefne Lands of Stapleton* aforesaid, which had been paid accordingly, and received by the plaintiff ; and that the fourpence a-year as a *modus* had always been paid for all tithes due to the vicar of *Darrington*, arising of and from *Holgate Farm* ; and that the plaintiff had received the same accordingly ;

The defendant dismissed. IT IS ORDERED AND ADJUDGED BY THE COURT, that the said defendant be, and is hereby dismissed of and from the said bill, and the several matters therein contained, with moderate costs, if the plaintiff do not hereafter put the defendant to further trouble for the said tithes.

WM. MONTAGU.
 TIM. LITTLETON.
 EDW. THURLAND.
 FR. BRAMSTON.

HILARY TERM
 30. CAR. 2.

DODD, Clerk, *against* INGLETON.

Essex, 24th February 1678.

The vicar of *Chigwell*, in *Essex*, claims the tithe of milk, and insists, that the defendant ought to send it to the vicarage. THE plaintiff, as vicar of the vicarage and parish-church of *Chigwell*, in the county of *Essex*, claimed the tithe of milk, and complained, that the defendant, under colour of some words in a decretal order made in this court in a former cause between the now plaintiff and *H. Hudson* and others, inhabitants of *Chigwell* (a), had not sent or carried the same to the plaintiff's house every tenth day, or meal as he ought to have done, according to the custom of the said parish.

1. Freem. 329.
 Raym. 277.
 Rayn. 54.

(a) In the case of the present plaintiff, *Dodd, v. Hudson*, 29th April 1675, 27. Car. 2. the Court ordered, "that the defendants shall pay to the plaintiff tithe milk in kind all the year round, the said plaintiff or his tithe gatherer making a demand of the same at the respective habitations of the said de-

fendants." Book of Decrees and Orders. See the cause of *Wickham v. Thrower*, ante, page 143. ; *Gee v. Perch*, Rayner, 98. ; *Carthew v. Edwards*, 3. Burn. E. L. 467. ; *Bosworth v. Limbrick*, Rayner, 809. 841. *Cullemore v. Bosworth*, Rayner, 938. *Hutchins v. Full*, Rayner, 1010.

The

The defendant denied any custom for carrying tithe milk to the vicar's house.

*Dodd
against
Ingleton.*

The defendant says, the vicar ought to send for it.

THE COURT being unanimously of opinion, that the *tenth meal's milk*, and not the *tenth of every meal's milk*, ought to be paid for tithes, it is ordered, by consent of the defendant's counsel, that the defendant, for the future, shall pay to the plaintiff his whole tenth meal's milk of all his cows every evening.

The Court of opinion, that the *tenth meal's milk* ought to be paid;

But as there was not any custom within the said parish of *Chigwell* insisted on by either side, for the plaintiff's fetching his tithe milk, or for the defendant's bringing the same either to the church porch, or to the vicarage-house in the said parish of *Chigwell*; and the Court being divided in opinion, whether of right the same ought to be fetched by the plaintiff, or carried by the defendant? the cause was ordered to stand over, that the Court might further consider and advise thereof in the mean time; and, on the fifteenth of *May* 1679, it was further ordered again to stand over, and that the Court will hear counsel on both sides, as well civilians as others, as to the common law right; and on the twenty-second of *May* 1679, after hearing the civilian, and counsel on both sides, and upon full debate, it was ordered again to stand over for the opinion of the Court.

but as to the plaintiff's fetching it, or the defendant's carrying it to the vicarage, they will hear counsel and civilians.

The question argued by civilians,

On the tenth of *November* 1679, the cause came on to be further heard, when

IT WAS ORDERED, ADJUDGED, AND DECREED BY THE COURT, and decreed the that the defendant, for the future, shall pay to the plaintiff his whole tenth meal's milk of all his cows every morning, and his whole tenth meal's milk every evening (a); and for that there is not any custom within the said parish of *Chigwell* insisted upon on either side for the plaintiff's fetching his tithe milk, or for the said defendant bringing the same, either to the church-porch, or to the vicarage-house in the said parish of *Chigwell*; and the Court being of opinion, that tithe milk is due of common right, and that as well for the preservation of the same as for the convenience in collecting the said milk, the same ought to be brought to the plaintiff, IT IS THEREUPON FURTHER ORDERED, &c. that the defendant, for the future, shall bring or send his tithe-milk to the church-porch within the said parish of *Chigwell*,

whole tenth meal's milk every morning and evening;

and carry or send the same every tenth morning and evening to the church-porch.

(a) See accord. *Bate v. Spracking*, 73.; *Gee v. Perch*, Rayner, 98.; *Hutchins v. Fish*, Rayn. 1004. *Bush. 20.* and *Dodson v. Oliver*, Bunb.

Doe
against
INGLTON.

as the same shall become due from time to time, that is to say, his, the defendant's, whole tenth meal's milk every tenth morning, and his whole tenth meal's milk every evening, to the end that the plaintiff, or his agent, or servant, in that behalf appointed, may receive the same accordingly without costs.

WM. MONTAGU.
THO. RAYMOND.
EDW. ATKYNS.
WM. GREGORY.

HILARY TERM
30. CAR. 2.

USHER *against* FOSTER.

Cumberland, 13th February 1678.

The plaintiff claims tithe of the pastures called *Kirsopp* and *Blacklevin*, in the parish of *Bewcastle*, in the county of *Cumberland*. **T**HE plaintiff, as rector of the parsonage of *Bewcastle*, in the county of *Cumberland*, demanded tithes of certain pasture grounds.

The defendant says, they are barren heaths, on which no hay can be made, and only useful as a *sheep walk*; and that there is a *modus* of eleven shillings a-year in lieu of all tithes whatsoever. The defendant answered, that he was and is seised *in fee tail* of certain pasture grounds called *Kirsopp* and *Blacklevin*, lying within the precincts of the said rectory; that the said pasture grounds are *barren heath*, unfit for hay or any kind of tillage, and usually hath been, and are employed for a *sheep walk*; and that there is a *modus* to pay to the rector of *Bewcastle* eleven shillings in lieu, and satisfaction, and discharge of all tithes whatsoever, yearly happening out of the aforesaid grounds.

An issue directed to try the *modus*.

A trial at law was directed; the issue to be, whether, time whereof the memory of man is not to the contrary, the owners and possessors of the said grounds called *Kirsopp* and *Blacklevin*, lying within the precincts of the said rectory, have paid yearly to the rectors or farmers of the said rectory for the time being the sum of eleven shillings, in lieu and full satisfaction of all manner of tithes issuing, growing, and renewing, yearly, upon the said grounds, and hath, during all the said time, been yearly accepted and taken by the rectors or farmers, except by the plaintiff or his farmers, in lieu and full satisfaction of the said tithes?

17th Nov. 1679.
A verdict for the defendant.

A trial was had; and a verdict passed for the defendant.

The bill dismissed.

THE COURT therefore ordered the defendant to be dismissed of and from the said bill, and all the matters and things therein contained.

SCUDAMORE

SCUDAMORE *against* PEMBERTON, Knt. and Others. EASTER TERM
31. CAR. 2.

London, 22d May 1679.

THE bill stated, that by indenture tripartite, dated the four-
teenth of *November*, in the fifteenth year of his present
majesty's reign, made between *R. Cocks*, impropiator of the
rectory of *Saint Dunstan's in the West*, in the city of *London*, of the
first part; *J. Thompson*, clerk, vicar of the said church, of the
second part; and the plaintiff *Scudamore* of the third part; all
that rectory and vicarage, with its rights, &c. and all tithes,
oblations, profits, and advantages, thereunto belonging, were
demised, bargained, and sold to the plaintiff, to hold for ninety-
nine years, if the said *Thompson* should so long live and continue
vicar thereof; that by virtue of the said demise the plaintiff
became entitled to all the profits of the said rectory and vicarage;
that some part of the parish lieth in the city of *London*, and another
part in the suburbs of the said city, within the county of *Middlesex*;
that the defendants had been owners or inhabitants of
houses, &c. therein; and that several rates or sums of money
were due to the plaintiff; which they refused to pay. The bill,
therefore, prayed relief in the premises.

The rector of
Saint Dunstan's,
in *London*, claims
2s. 9d in the
pound, pursuant
to 37. Hen. 8.
c. 12.

The defendants' counsel insisted, that the defendants' respec-
tive houses were discharged from the payment of two shillings
and ninepence in the pound, by reason of certain ancient cus-
tomary payments for their said houses, in lieu of tithes for their
said houses, or of the ground on which they were built.

The defendant
insists on a *modus*
of 8s. 1rd.
quarterly.

THE COURT ordered, that trials shall be had touching the
validity of the *moduses*; the equity of the cause to be reserved
till after the same be had.

Accordingly a trial was had; and the jury found, that by cus-
tom a certain sum of money was payable, and accustomed to be
paid, from time to time, every year, time out of mind, *viz.* eight
shillings and elevenpence quarterly, for and in satisfaction of all
tithes of the ancient house and garden (in the occupation of *Sir*
George Benyon), to the proprietor of the tithes of *Saint Dunstan*
in the West; and that two shillings and ninepence in the pound,
according to the annual rent of the said ancient messuage and
garden, with the appurtenances, was never paid, nor ought to be
paid, to the proprietor of the tithes of *Saint Dunstan*, for the
tithe of the said ancient messuage, with the appurtenances.

10th Dec. 1679.
Verdict in fa-
vour of the mes-
sage.

The cause now came on to be heard upon the equity reserved;
and upon reading the said order and *postea*, and hearing
counsel,

IT IS THIS DAY ORDERED BY THE COURT, that the defendant
Sir F. Pemberton shall be, and is hereby dismissed out of this
court,

The defendant
dismissed.

SCUDAMORE
against
PEMBERTON
AND OTHERS.

court, as to the said bill, and all and every the matter and things therein contained, without prejudice nevertheless to the plaintiff, his executors, or assigns, to sue for and recover the arrears of the *modus* due for the said house and ground late *Sir Simon Baskerville's*, from the said defendant, and other the persons liable to the payment thereof; the other persons liable with the said defendants to the arrears of the *modus* not being made parties to this suit, if the plaintiff, his heirs, or assigns, shall think fit to sue for the same (a).

WM. MONTAGU.
THO. RAYMOND.
EDW. ATKYNS.
WM. GREGORY.

(a) It appears from the Book of Decrees and Orders, that the plaintiff did file another bill against the defendants *Sir Francis Pemberton* and others; that the cause came on to be heard on the 22d May, 31. Car. 2.; that the defendants' counsel insisted, that the defendant *J. Marshall's* house was discharged from the payment of the two shillings and ninepence in the pound, by reason of an ancient customary sum of nine shillings and fourpence, payable yearly in lieu of tithes for the said house. On which the Court directed two issues, FIRST, Whether the said sum was payable for the said house in lieu of tithes; SECONDLY, Whether two shillings and ninepence in the pound, according to the annual rent, was payable to the vicar for the said house, or not; and upon full evidence on both sides, the plaintiff was nonsuited, and a new trial granted; on which trial, before THE LORD CHIEF BARON, the plaintiff, after full evidence, was again nonsuited. On which it was finally ordered, on the 27th October 1681, in Michaelmas Term, 33. Car. 2. that the defendant *Marshall* be dismissed from the said bill, and the matters and things therein contained. The defendant *Marshall* died; and on the 9th June 1684, 36. Car. 2. the plaintiff *Scudamore* filed a bill against his widow for the recovery of the two shillings and ninepence in the pound, pursuant to the statute 37. Hen. 8. c. 12. The widow

pleaded, that the house was situated in *Fetter Lane*, and, having been burnt down, was re-erected on ground time out of mind belonging to the converted Jews, called THE ROLLS, which is situated between *Chancery Lane* and *Fetter Lane*; that the said ROLLS is a liberty itself, and not in the city of *London*, but exempt from the same, and a chapelry of itself; that the said house of converts, now called *the Rolls*, was and is an ancient structure or building, and was a religious house or monastery time out of mind, and was, long before the 37. Hen. 8. c. 12. and decree, anciently appointed and appropriated to and for the reception, instruction, and maintenance of such Jews and infidels as were converted to the Christian faith; and that, time out of mind, it has been exempt from tithes. Two issues were directed to try, FIRST, whether the house was within THE ROLLS; SECONDLY, whether the ground on which it was built is in *London* or *Middlesex*; but the parties never went to trial, and it came on again on the equity reserved; and the Court, on inspecting many grants from the crown to several persons masters of the rolls, and other records, declared, that the house ought not to be charged with any tithes to the vicar of *Saint Dunstan's* by the statute 37. Hen. 8. c. 12. or otherwise, no tithes ever having been paid for the same. See also *Bennet v. Trepas*, Bunb. 106.

HARTLEY and Others *against* GEY.TRIN. TERM,
31. CAR. 2.*Lancashire, 3d July 1679.*

THE plaintiffs were curates of the several parochial chapelries within the rectory of *Whalley*, in the county of *Lancaster*. The defendant was vicar of the parish of *Whalley*. If, in a lease of a rectory, the *Easter roll* and *surplice fees* be reserved, and made payable to the vicar only, yet if it appear to have been the intention of the lessor that the curates of certain chapelries should receive a proportion of the same, a court of equity will decree it to be a trust for the curates, and order trustees to be appointed accordingly.

The bill stated, that the rectory and titheable places within the said parish are part of the possessions of the *Archbishop of Canterbury*, and of great extent and yearly value; that the vicar of *Whalley*, and the curates, being but slenderly provided for, the vicar not having above forty pounds a-year salary, and the curates only eleven pounds, *Mr. Moore*, the late vicar, and all the curates, did, soon after the restoration, petition *Dr. Juxton*, the then *Archbishop of Canterbury*, for an augmentation to their salaries; and the curates, being ten in number, having paid the vicar twenty pounds, he presented the petition to the *Archbishop*, who promised, that when *Sir Ralph Ashton*, his tenant, renewed his lease of the rectory, he would reserve the *Easter roll* (being customary payments at *Easter* yearly), and the *surplice fees* at christenings, marriages, churchings, and burials, for the vicar and curates, which were valued at one hundred and twenty pounds a-year, but that they are not worth so much; that *Sir Ralph Ashton* afterwards renewed his lease, and the *Archbishop* reserved to himself and his successors the said *Easter rolls* and *surplice fees*, to be received by the vicar, without mentioning the curates in the lease; but he declared, that the vicar should only have forty pounds a-year out of the same, who was contented therewith, and the remainder was proportionably divided amongst the curates, who enjoyed the same for some time after the defendant became vicar of the said parish; but that the vicar having procured a copy of the said lease, and not finding the curates mentioned therein, refused to pay the same. The bill, therefore, prayed to be relieved, and to have a decree for the payment of the same for the future, and for the arrears.

The defendant pleaded a release of the matter in question from the plaintiff *Banks*; but, on hearing, he was ordered to answer.

The defendant accordingly answered, and denied most part of the bill; but confessed, that in the year 1663 he became vicar, and received to his own use all the *Easter roll* and *surplice fees*, as in the lease are mentioned and reserved to him.

The plaintiffs replied; and issue being joined, witnesses were examined.

THE COURT, upon opening the pleadings, and hearing counsel, and reading several depositions taken in the cause, and on debate

HARTLEY
against
GUY.

of the matter, declared, that the trust is well proved, and that there was a trust in *the vicar*, by *Archbishop Juxton*, who gave the augmentation of the *Easter roll* and the *surplice fees* for the curates of the several chapelries of *Burnly, Haslingdon, Colne, Clitheroe, Downham, Altham Church, Kirke, Padcham, Rossindell, and Pendell*, over and above forty-two pounds thereof to make up the vicar's thirty-eight pounds, eighty pounds a-year, and the rest to be distributed amongst the curates of the said several chapelries, who were to provide themselves their own common wine for their respective chapelries; and the vicar was to be discharged thereof.

And it was thereupon ordered by the Court, that the said trust be, and is hereby confirmed; that the defendant shall forthwith grant and assign to such person or persons as the curates, or the major part of them, shall think fit, all the said *Easter roll* and *surplice fees* within the rectory and titheries of *Walley*, under a trust, that the grantees or assignees shall pay to him, the defendant, and his successors, forty-two pounds a-year out of the same, clear, without any charge of communion wine, or other charge whatever; and that the rest be divided amongst the curates, for the time being, proportionably; that the said defendant shall pay to the plaintiffs, the curates, their several proportions of the mesne profits, after the rate of forty shillings a piece yearly, from the several times of their respective admittances, without costs, to save further charges; but in default, it is referred to the auditor of the said county to certify the same; and the plaintiffs *Hargraves, Phillipson, and Banks*, who were parties to the suit, and afterwards struck out upon their paying their share of the costs of the suit, are to receive their proportions; and it is ordered, that *costs* shall be suspended till the auditor shall have made his report.

WM. MONTAGU.
THO. RAYMOND.
EDW. ATKYNS.
W. GREGORY.

TRIN. TERM,
31. CAR. 2.

SWAN against STANLEY; et è Contra.

Worcestershire, 30th June 1679.

The vicar of **T**HE plaintiff, as vicar of the parish-church of *Alderminster*, in *the county of Worcester*, stated, by his bill, that, for twenty years past, he had been vicar of the said parish, and was entitled to, and ought to have received, *predial tithes* of *grass and hay*, and the all *small tithes* there arising; that there is a custom within the said parish, that if any inhabitants buy in sheep before *Candlemas*, and sell them before the next shearing-time, the owner is to pay to the vicar a halfpenny a sheep for every sheep sold; that if any owner

The vicar of *Alderminster*, in *Worcestershire*, claims the tithes of *grass and hay*, and the *small tithes* of the said parish; and sets forth a special manner of tithing.

owner sell any ewes and lambs kept there before *Holy Rood Day*, the owner is to pay to the vicar a halfpenny for every ewe, and a halfpenny for every lamb so sold; that if any owner sell sheep between *Candlemas* and *Midsummer*, the vicar is to have a halfpenny a sheep.

SWAN
against
STANLEY;
et c. Contra.

The defendants answered, and confessed the plaintiff to be vicar of the parish, and entitled to the tithes of wool, lamb, calves, pigs, pigeons, apples, pears, hens, turkeys, geese, hemp, and flax, arising within *the town* and *the common fields* there, according to the custom of tithing there used time out of mind, but whether in all the parish they knew not; nor did they believe that he ought to have the *predial tithes* of grass and hay within the said parish, for that the vicarage was not endowed therewith; but they confessed, that he had received the tithe hay arising on their several farms; but denied that he was entitled to the tithe of *furze*, or *lops of trees*, for that the vicarage is not endowed thereof, nor were such tithes demanded till of late years. They further stated, that in recompence of what fuel they burnt in their houses, they have paid to the vicar a penny called a *smoke penny*, according to the custom there used time out of mind. They confessed also, that there were such customary payments for sheep, as in the bill are mentioned; and said, that there is a custom to pay the vicar a farthing a sheep for every sheep agisted in the common fields there; and one penny a cow for every milch cow kept there, as a rate in lieu of tithe milk; and for calves, if the owner have seven, the vicar is to have the seventh, paying the owner three halfpence; if under seven, the vicar to have half a calf; if ten, the vicar to have the tenth in kind; which rates the plaintiff and his predecessors had or ought to have observed.

The defendants admit his title to small tithes in the town and common fields; but say, he is not entitled to the tithes of grass and hay,

or of furze and the lops of trees;

that they pay a *smoke penny* in lieu of wood for fuel;

and state a different custom as to sheep, &c.

The cross bill set forth, that the plaintiffs were landholders of several farms in the said town and common fields of *Alderminster*; and that there had been several customs there, time out of mind, observed, THAT IS TO SAY, that for such sheep as were bred in the common fields, and not wintered there, the vicar to have only half tithe wool thereof; and for such sheep as were brought in after *Candlemas*, and shorn there, the vicar to have a halfpenny a sheep; and for such sheep as were agisted in the common fields there, the vicar to have a farthing a sheep; and that such rates were in lieu of tithe wool; that for tithe calves, if the owner have seven, the vicar to have one, paying to the owner three halfpence; if under seven, the vicar to have half a calf; if ten, to have the tenth in kind. That for such milch cows as were kept in the common fields he is to have one penny a cow, and so for every milch cow, as a rate for tithe milk. That every housekeeper used to pay a penny at *Easter*, called a *smoke penny*, in lieu of tithe for the fuel they burnt in their houses; and twopence for offerings for man and wife; which customs

The defendants file a cross bill, stating certain customs, and insist such customs ought to be observed, and not those stated in the original bill.

SWAN
against
STANLEY;
et c. Contra.

have been observed by the vicars there, but were by the present one refused, who endeavoured to abolish the same, and set up other customs; that, notwithstanding, they had paid the vicar all his tithes, as in their answer is set forth: therefore they prayed relief in the premises, and that the customs might be confirmed by the decree of this court.

The plaintiff answers the cross bill, and says, the *smoke penny* is not in lieu of fuel.

The defendant answered, and confessed there might have been some such usages for tithing for some years; but said, that the same had not been observed time out of mind, and that the penny paid as a *smoke penny* is not paid in lieu of what fuel they burnt in their houses. He denied that he endeavoured to destroy the ancient customs, but submitted to the same when proved; and said, that there were good lops of trees and quantities of furzes, which the plaintiffs sold, for which they had not paid tithes.

Both causes heard.

In both which causes issue being joined, several witnesses were examined on both sides; and the causes brought to a hearing on the twenty-sixth of *June* 1678, when they were referred; but the parties not agreeing, they came this day for the opinion of the Court; and after long debate of the matters complained of by the vicar,

The plaintiff made no ground for relief.

THE COURT did not see cause to relieve him upon any of them, but doth this day order and adjudge, that the said bill be, and is hereby absolutely dismissed, yet without costs.

And for that the Court was satisfied with the proofs now read, that there are, and have been such customs for tithing used, time out of mind, within the said parish of *Alderminster*, as the plaintiffs in their cross bill have set forth,

But the Court establish four different customs, and order them to be hereafter observed by the vicar.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the customs mentioned in the said cross bill, and hereafter recited, that is to say, FIRST, The custom for paying to the vicar of *Alderminster* for the time being, at *Lammas Day* yearly, a farthing a sheep for every sheep agisted in the common fields of *Alderminster*, in lieu of tithe wool;—SECONDLY, The custom for calves, that if the parishioner have seven calves, the vicar is to have one, paying to the owner three halfpence; if under seven, the vicar to have one halfpenny for each calf at *Lammas Day*; and if ten, the vicar to have the tenth calf in kind;—THIRDLY, The custom for milch cows, that for every milch cow kept in the said common fields, the vicar to have yearly one penny for each cow, in lieu of tithe milk, to be paid at *Lammas Day*;—FOURTHLY, The custom that every housekeeper shall pay a penny at *Easter* yearly, called a *smoke penny*, in lieu and satisfaction of tithe for the fuel burnt in their respective houses, shall be, and are hereby established and confirmed to be for ever hereafter observed by and between the said vicar and his

his successors ; and the said *Robert Stanley*, and other the plaintiffs in the cross bill, and all others claiming under them ; with moderate costs to be paid by the defendant *Swan* in this cause.

SWAN
against
STANLEY ;
et c. Contra.

WM. MONTAGU.
THO. RAYMOND.
EDW. ATKYNS.
W. GREGORY.

SIMPSON *against* TUCKER.

TRIN. TERM,
31. CAR. 2.

Devonshire, 7th July 1679.

THE plaintiff, as vicar of *Collyton*, and of *Shute*, and *Monneton*, thereto appendant, claimed tithes for agistments for three years past.

The vicar of *Collyton*, in *Devonshire*, claims tithes in kind.

The defendants alledged, that they are inhabitants within the tithings of *Minchenholme* and *Woodland*, within the said parish of *Collyton*, and set forth several customary payments within the said tithings ; viz. fourpence for a milch cow, and threepence an heifer yearly, in lieu of the tithes of calves, milk, cheese, and butter ; one penny for every colt ; threepence for the tithes of every acre of meadow in *Minchenholme*, and twopence in *Woodland* ; and for every hoghead of cyder or perry threepence in lieu of the tithes of all apples and pears grown within the said tithings.

The defendants state that they are inhabitants of *Minchenholme* and *Woodland*, in the said parish, and set up a *modus* of threepence a hoghead for cyder and perry in lieu of all tithes of apples and pears.

The plaintiff insisted, that there are the same customs throughout the whole parish of *Collyton*, except the twopence and threepence an acre of tithe hay ; that the defendants are *justment holders*, or renters of land at a yearly rack rent ; that all the *justment holders*, or renters of land, as well within the said tithings of *Minchenholme* and *Woodland*, as in all other tithings within the said parish, ought to pay agistments after the rate of twenty-pence in the pound for so much land as they depasture ; which said agistments or payments have been usually paid by all renters of land throughout the whole parish of *Collyton*, where the vicar hath tithes, though the owner of such lands, if he kept the same in his own possession, might have the benefit of the said customs.

The plaintiff replied, that the defendants are *justment holders*, and ought to pay for agistment after the rate of twenty-pence in the pound.

THE COURT conceived the custom of paying threepence a hoghead for cyder or perry, in lieu of all apples and pears grown within the said tithings, to be void, and against law ; and therefore doth ORDER AND DECREE, that the defendants shall pay to the plaintiff threepence for every hoghead of cyder or perry in lieu of all tithes for the same ; and that the said defendants shall account, satisfy, and pay to the plaintiff the tithes of all board apples and pears, and all other apples and pears not made into cyder or perry, or the value thereof.

The Court of opinion that the *modus* respecting cyder and perry is void, and decreed payment of threepence a hoghead for cyder and perry, and of apples and pears in kind ;

SIMPSON
against
TUCKER.
and direct an issue as to the payment of 20d. in the pound by *justment holders*.

THE COURT further ordered this issue to be tried, "Whether by the custom within the said tithings of *Minchenbolme* and *Woodland* all *justment holders*, or renters of ground at a yearly rent within the said tithings, have used, and ought to pay yearly to the vicar of *Collyton*, for the time being, twentypence in the pound for such grounds as they feed and depasture, in lieu of all tithes and customary payments for all cattle fed or depastured upon the same?" both parties to admit all circumstances, and to insist only upon the matters aforesaid.

A verdict found by the direction of the Judge, that when pasture is let by itself, the *justment holders* are to pay 20d. in the pound; but where pasture is let with other lands at one entire rent, they are to pay tithes in kind;

A trial was according had; and, after full evidence given on both sides, a verdict was given for the plaintiff, and thus indorsed: "When pasture is let by itself, then the renters are to pay twentypence in the pound according to the rent; when pasture and other grounds are let together, then they are to pay tithes in kind for the pasture according to law, one penny every forty shillings;" that upon the trial of this cause, the plaintiff pretended a *modus* of twentypence in the pound; and the defendant pretended a *modus* of fourpence per cow, and the rest of the tithes of pasture to be paid in kind; and it being LORD CHIEF JUSTICE NORTH's opinion that "where the pasture was not let by itself, whereupon the rent of the pasture was not certain, there could be no such *modus* of twentypence in the pound for the uncertainty of the value;" thereupon his lordship directed the jury that, in case they found against the pretended *modus* of fourpence per cow, they should find that tithes in kind were due; whereupon they gave a verdict for tithes in kind.

and in the present case, pasture and other lands, being let together at an entire rent,

The cause came on the twenty-second instant; and upon reading the order, the *poslea*, the indorsement, and the judge's certificate, and hearing counsel on both sides, the same was continued to the twenty-fifth of *November* 1680; when, after long debate thereupon, and due consideration of the whole matter had by the Court, forasmuch as it appeareth that pasture and other grounds were let together to the defendants,

the Court decreed the payment of tithes in kind,

IT IS ORDERED BY THE COURT, that the defendants shall satisfy and pay to the plaintiff their tithes in kind, according to the value thereof, to be computed by the deputy remembrancer (except for cyder, which is to be paid according to the said *modus* of threepence a hoghead.)

WM. MONTAGUE.
EDW. ATKYNS.
WM. GREGORY.
J. STREET.

HATCHER

HATCHER *against* CLEWER.

HILARY TERM

31. CAR 2.

Surrey, 19th February 1680.

THE plaintiffs, for and on behalf of themselves and all other the owners or occupiers of any messuages, lands, or tenements for which any tithes or dues are payable, within the town or parish of *Croydon*, in the county of *Surrey*, filed their bill against the defendant, the vicar of *Croydon*, for the purpose of establishing and confirming certain ancient customs, usages, and modes of paying tithes, which, during the time whereof the memory of man is not to the contrary, have been used within the town and parish of *Croydon*; viz. for the tithe of every cow and the proceeds thereof fourpence; for every working horse fourpence; for every colt above two years old twopence; for every dry beast twopence; for pigs, the tenth pig in kind, except of the first farrow; for every garden or orchard, whereof the owner makes no benefit by the sale of any thing that grows therein, one penny; for every sign at an inn or alehouse, sixpence; for every master tradesman's apron, fourpence; for every cock one penny, in lieu of tithes of eggs; for all apples, pears, plumbs, and other fruit, the tenth in kind; for herbs that follow the spade, the owner whereof doth sell and make profit thereof, the tenth in kind; for every single man receiving the sacrament, fourpence; for every single woman receiving the sacrament, threepence; for every man and his wife who receive the sacrament, fivepence; for every marriage, the banns of which are published in the parish church, two shillings and fourpence; for every marriage by licence, five shillings; for every man taking a wife out of the said parish, and not marrying her therein, five shillings; for churching every woman, eightpence; for every person buried in the church-yard of the said church above the age of two years, two shillings; for every person under that age, one shilling and fourpence; for burying every person above the aforesaid age without a coffin, one shilling; and the like for every person of the same age buried at the parish charge; for every parishioner above the age aforesaid buried in the body of the said church, six shillings and eightpence; for reading the burial service, two shillings; for every person under the said age, three shillings and fourpence; for reading the burial service, two shillings; for every stranger of both ages, double duties; for every person buried in the chancels of the said church above the age of two years, thirteen shillings and fourpence; for every person buried in the chancel under two years of age, six shillings and eightpence; for reading the burial service for either person, two shillings; for every stranger, double duties; and for going before the body of every parishioner, one shilling; and of a stranger, two shillings; the tenth fleece of wool shorn within the said parish; for the fall of every lamb, twopence; for honey, the tithe in kind;

The inhabitants and land holders of *Croydon*, in the county of *Surrey*, file their bill against the vicar to establish and confirm the mode of paying certain vicarical tithes within the said parish.

The several modes of tithing.

which

HATCHER
against
CLEWER.

which payments ought to be paid at *Easter*, or at some other certain time in the year.

The vicar says
the other land
holders and the
patron, and the
ordinary, ought
to be made par-
ties to the bill.

The defendant said, that he knew not whether any other of the owners or occupiers of lands or tenements within the said parish are privy to the bill; and that as the scope of the bill is to have a settlement of divers customs for the payment of tithes and other duties, the plaintiffs ought to have made *the patron* and *the ordinary* of the diocese parties to the bill; that he knew not what customs have been used within the said parish for payment of tithes to the vicar, nor that such as are set forth in the bill have been, time out of mind, used therein; but he believed the contrary, because, by some ancient endowment, he finds the tithes to be much otherwise; and he admitted some of the said customs, and denied others.

Upon hearing counsel on both sides, and reading the proofs,

Several of the
modes of tithing
are stated in the
bill established
and confirmed.

IT IS ORDERED, ADJUDGED, AND DECREED, that the *modus* insisted on by the plaintiffs, and all other the inhabitants of *Croydon*, to the particulars hereinafter mentioned, be established and settled, and that the plaintiffs and all other the inhabitants do pay to the defendant for the matters after-mentioned as followeth: viz. the sum of fourpence only, and no more, for and in lieu of the tithe of a horse, mare, or colt; for the tithe of the sign of every inn or alehouse within the said parish of *Croydon*, sixpence only, and no more; for the tithe milk of every cow going and depasturing within the said parish fourpence only, and no more; and this Court is of opinion, that the *modus* for the proceeds of a cow extends only to milk, and the plaintiffs paying according to that *modus* are to be discharged of tithe milk; and the Court is also of opinion, that tithe calves ought to be paid in kind; and for the tithe of every dry bullock going and agisting within the said parish, twopence only, and no more; and the said plaintiffs and all other the inhabitants are to pay to the defendant their arrears of the tithes aforesaid, according to the rates before mentioned, without costs on either side; and as for the lambs, the parishioners are to pay fourpence only, and no more, for every lamb, which fourpence is to be shared between the parson and the vicar, according to former usage within the said parish.

AND IT IS FURTHER ADJUDGED AND DECREED BY THE COURT, that the defendant shall accept of the said rates and sums of money for and in lieu of the tithes before-mentioned during so long time as he shall continue vicar of *Croydon*, and not demand or receive of and from the said parishioners of *Croydon* any greater or other sum of money whatsoever for and in lieu of the tithes before-mentioned.

And

And as to all other matters in the said bill contained, and not hereby decreed, the bill is dismissed.

HATCHER
against
CLEWER.

WM. MONTAGU.
TH. RAYMOND.
EDW. ATKYNS.
WM. GREGORY.

BROOKE *against* HULL.

EASTER TERM
32. CAR. 2.

Northamptonshire, 17th May 1680.

THE plaintiff stated, that his father was seised of the rectory of *Great Okeley*, in the county of *Northampton*, and of all glebe lands, and of all manner of tithes, as well great as small, and of all rates of tithes; that at his death the said rectory and tithes (except the tithes that were settled on his wife) descended to the plaintiff, as son and heir, and that he hath ever since been entitled to, and ought to have and enjoy, the same, and all other profits belonging thereto, except as aforesaid; that the defendant, for a few years past, did occupy certain closes in *Okeley*, called *Oldfield*, otherwise *Oldfield Closes*, the said closes being no part of the jointure lands; the tithes whereof, or some rate, ought to be paid to the plaintiff.

The plaintiff claims the tithes of certain lands in the parish of *Okeley*, in *Northamptonshire*, called *Oldfield Closes*.

The defendant said, that the closes were parcel of the lands of the late dissolved abbey of *Papwell*, which was of the *Cistercian* order, and therefore freed from the payment of tithes, especially so long as he kept it in his own hands; for that he then, and so during the time in the bill mentioned, had the inheritance thereof.

The defendant says, they are discharged of tithes, as having formerly belonged to the *Cistercian* order of monks, and because he

had the inheritance thereof, and the lands were in his own occupation.

A trial at law was ordered upon this issue, "Whether the close called *Oldfield Close*, in the defendant's possession, be discharged of the payment of tithes or not, being in the defendant's hands?" the defendant to admit the plaintiff to be owner of the rectory, and the plaintiff to admit the defendant to be owner of the freehold and inheritance of the close.

An issue directed to try whether the said lands are tithe free.

A trial was accordingly had; and, upon full evidence, the plaintiff became nonsuited.

THE COURT therefore ordered that the defendant be dismissed of and from the bill, and the matters therein contained.

The defendant dismissed.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
RD. WESTON.

MEIRES,

EASTER TERM
32. CAR. 2.

MEIRES *against* ASTLEYN and Others.

Nottinghamshire, 17th May 1680.

The plaintiff claims the tithes of lamb and wool in the parish of *Southwell*, in the county of *Nottingham*.

THE bill stated, that the chapter of the collegiate church of the blessed *Mary the Virgin*, of *Southwell*, being seised in fee of all the tithes of wool and lamb within the town of *Soke*, and parish of *Southwell*, did, by indenture dated the fourteenth of *June*, in the twenty-third of the present king, demise and grant to *Ann Bennett* all the said tithes of wool and lamb, to hold to her, her executors, administrators, and assigns, for twenty-one years; that she became possessed thereof, and being so possessed, did, by deed dated the the eleventh of *January* 1667, sell and assign to the plaintiff the said tithes and all her estate and term therein, &c.

One defendant pleads a *modus* of 4l. a-year in lieu of all tithes whatsoever;

The defendant *Astley* confessed the chapter's title to the tithes of wool and lamb in *Haloughton*, otherwise *Haughton*, which town is within the parish and soke of *Southwell*; but he denied the plaintiff's title; for that he was farmer, under *Sir Charles Wolfey*, of an ancient messuage or farm, and divers lands and tenements, for which he had not paid tithe of lamb and wool to the plaintiff; and that the owners of the said messuage, from the time whereof the memory of man is not to the contrary, have yearly paid four pounds to the Chapter in full discharge of all manner of tithes.

the other defendants plead a custom to pay a *cloake ben* in lieu of all tithes of wool and lamb.

The defendants *May* and *Watts* denied all knowledge that the chapter is seised of and in all the tithes of wool and lamb within the town of *Soke*, and parish of *Southwell*, or that they made such lease as in the bill is mentioned; but said, that all the tithes of corn, hay, and all other tithes whatsoever, due and accustomably paid, growing on the grounds they occupy in *Halam*, where they dwell, being within the manor of *Woodborrow*, are payable, and of right do belong to the prebendary of the prebend of *Woodborrow*, and that they, and all under whom they claim, time beyond the memory of man, have, or ought to have paid to the prebendary of the prebend of *Woodborrow* a *cloake ben* in lieu of all tithes of wool and lamb growing, &c. within or out of any the lands they occupy or possess in *Halam* or elsewhere within the said soke.

Upon reading the chapter's lease to *A. Bennett* of all the small tithes, and her assignment to the plaintiff,

All the defendants decreed to pay tithes in kind.

THE COURT declared, the pretended *moduses* set on foot by the defendants in their answers to be void, and that they ought to pay their tithes of wool and lamb to the plaintiff.

WM. MONTAGU.

EDW. ATKYNS.

WM. GREGORY.

G W A V A S

GWAVAS *against* TEAGE. (a)TRIN. TERM,
32. CAR. 2.

Cornwall, 14th June 1680.

THE bill stated, that the plaintiff, on the twenty-fifth of *March*, in the year 1669, was seised, and ever since has been seised in his *demefne as of fee*, of the rectory impropriate, and tithes of the parish of *Paull*, otherwise *Paulyn*, in the county of *Cornwall*, the same being a very ancient rectory and adjoining to THE SEA, and extending itself into *Mounts Bay*, where the inhabitants of the parish aforesaid, and others, had, time out of mind, used to have and keep fishing boats and nets for taking of cod, ling, hake, lobsters, pilchards, and all other great and small sea fish within that bay and seas adjoining, and to tie and moor their boats, and keep their nets; that, time out of mind, a custom of tithing had been there used and approved, that every parishioner, and others, being proprietors or occupiers of any fishing-boat or net which had been usually tied, moored, or kept in any part of the parish aforesaid, when not used, paid, and by the custom ought to pay to the owners of the rectory, the tenth part of all great and small fish taken in the said bay or other seas, with such boats, nets, or other fishing craft so tied, moored, or kept (except only such fish as had been used for bait for other fish, of which bait no tithes were paid); that the defendants ever since have been inhabitants of *Paull* aforesaid, and used fishing-boats, nets, and other engines for the catching of fish; that they usually tied, moored, or kept the same at *Moufehole*, or *Newlynn* (being towns or villages within the said parish of *Paull*), or at other places within the parish, at such times when the same were not used for fishing; that since the twenty-fifth of *March* 1669, the defendants had taken in the said bay and seas (besides such fish as were used for baits) several quantities of sea fish of several sorts and kinds, the tenth part whereof ought to have been paid to the plaintiff, according to the custom; but which they refused to do under various pretences. The bill therefore prayed a discovery, and an account and satisfaction for the same.

The defendants said, that they believed the plaintiff was seised of the said rectory impropriate, whereby he ought to have the tithe of corn, grain, and *book fish*, and certain customary payments for *pilchards* caught by *seynes*, as the same had been paid time out of mind; they confessed that the parish of *Paull* adjoined to the sea, and extended itself into *Mounts Bay*; and that the inhabitants of that parish, and others, had, time out of mind, tithe of *book fish* in kind, but not of *pilchards* caught in *seynes*, or made into *fumacboes*.

(a) See the cases of *Gwavas v. Kely.* and *S. C. Bunb. 239. 256. and 3. Bro. Black in Trinity Term, 1. Geo. 2. post. ; P. C. 479.*

used

GWAVAS
against
TEAGE.

but of the tenth
part of the mo-
ney they sell for
in *fresh*,

except the *meas-*
ed fish;

and that they
are willing to
pay according to
the custom stat-
ed in the an-
swer;

but ought not to
pay for either
lobsters or *pilch-*
ards caught in
nets or *meased*
in *seynes*.

used to moor and keep their boats and nets there for taking of cod, ling, hake, lobster, pilchards, and other sea fish within the said bay and seas adjoining; but they denied the custom in the bill set forth; and said that, time out of mind, there had been, in the said parish of *Paull*, otherwise *Paulyn*, two ancient fishing towns, called *Newlynn* and *Moufehole*; that the inhabitants of those towns, and of *Paull*, who had so moored and kept their boats and nets, did only pay tithe in kind for *book fish*, which was set out by the fishermen who took the same after they came on shore, and that there was never any tithe in kind paid for *pilchards*; but that for *pilchards* caught in *seynes* by boats so moored (except such as were measured and hung by the head in such *seynes*), the owners of such boats and *seynes* had used to pay the tenth part of the money for which the same were used to be sold in *fresh*, according to the price the owners paid the seamen for their parts thereof (being one-half of all *pilchards* so taken by such *seynes*), except the measured fish for which no tithe was paid; that greater quantities of *pilchards* were taken in driving nets than could be used for bait, and that when brought on shore part were sold in *fresh* to the common people, and the other part made into *fumachoes*, and sold to merchants without payment of any tithe in kind, or any thing in lieu thereof; and they did believe that, if any tithes were due for *pilchards* measured in *seynes*, or caught in driving nets, the same would have been demanded and recovered by the former rector of the said parish, in whose time driving nets were used, and quantities of *pilchards* taken by them more than were used for bait, and yet no tithe paid or demanded for the same, as they remembered. They also stated, that they did not know that any tithe had been paid in kind for *lobsters* caught in pots or otherwise, or any thing in lieu thereof. They denied the payment of the tenth *pilchard* in kind of such as were taken in *seynes*, or other payment than as aforesaid; but said that they were willing to pay, and had paid their tithes and customary payments, as anciently used; and they all owned themselves to be parishioners and inhabitants of the said parish, who had exercised the fishing craft within the time aforesaid, with boats and nets so moored and kept as aforesaid; they said that in the years charged they were owners of boats, *seynes*, driving nets, or other fishing craft, kept and moored in the parish of *Paull*, with which they had taken *pilchards*, *lobsters*, and other fish, and had paid to the plaintiff the tithe of all *book fish*, and also the customary payment for all *pilchards* taken in *seynes* (except measured *pilchards*); but they insisted that they ought not to pay any tithe or other thing in lieu thereof for *lobsters* or *pilchards* caught in driving nets, or measured in *seynes*; nor any tithe in kind for *pilchards* caught in *seynes*, but only the tenth penny, for which the same were sold in *freshes* as aforesaid.

The

The plaintiff replied; and issue being joined, witnesses were examined on both sides; and upon hearing counsel on both sides, and reading the depositions, and on long and solemn debate of the matter,

THE COURT declared, that the plaintiff ought to have the tithes in kind of all sea-fish whatsoever, taken by the defendants, since the plaintiff's title accrued, by or with boats, nets, or other fishing craft tied, moored, or kept within the said rectory; whether the said sea-fish were taken in or with nets called *seynes*, or in or with nets called *drift nets* or driving nets, or by or with any other fishing craft (except only such fish as were taken and used for bait for other fish, and excepting fish meased in the sleeves of *seynes*, whether used for bait or not), which this Court declares not to be titheable; that the payments of the tenth penny of the money, for which the fish were sold, was, in effect, a payment of the tithe in kind; and that the late usage of taking *pilchards* there in drift or driving nets, for other purposes than for bait, was fraudulently put in practice, to defeat the custom and the plaintiff's inheritance therein, and ought not to be admitted, to avoid payment of tithes for pilchards so taken (except for such pilchards only as are used for baits, or were meased in the sleeves of *seynes*); and therefore,

The tithes of all sea fish whether taken with *seynes* or *drift nets*, except such as are used for bait, or are meased, decreed to be paid in kind, or the tenth penny for which they are sold.

The practice of taking pilchards in drift nets, except for bait, is fraudulent.

IT IS ORDERED BY THE COURT, that the said defendants do come to an account with the plaintiff for the tithes of all such fish, as have been taken by them since the twenty-fifth of *March* 1669, in, by, or with boats, nets, whether *seyning* nets or driving nets, or other fishing craft whatsoever, tied, moored, or kept within the said rectory or parish (excepting only such fish as have been used by them respectively for bait for other fish, and excepting fish meased in the sleeves of *seynes* as aforesaid); with costs.

The defendants ordered to account.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
RD. WESTON.

CASTLE *against* MAULTIN.

Worcestershire, 7th July 1680.

TRIN. TERM,
32. CAR. 2.

THE rector of the parish church of *Stockton*, in *Worcestershire*, claims tithe of milk, due from the defendant for six years past.

The rector of *Stockton*, in *Worcestershire*, claims the tithe of milk in kind.

The

CASTLE
against
MAULTIN.

The defendant insisted on a custom to pay the seventh calf, in lieu of tithe milk.

The defendant pleads a custom to give every seventh calf, in lieu thereof. Upon opening the pleadings, and reading some of the depositions taken in the cause,

An issue directed to try the custom.

The jury find the issue with an addition.

The Court ordered the custom to be tried at law; and at the trial the jury found, that every occupier or possessor of lands, within the parish of *Stockton*, used to pay the rector of the said parish, for the time being, the seventh calf, in satisfaction of tithe milk, *if so many calves did happen in one year, and if not, to pay none.*

The plaintiff's counsel insisted that the said verdict is not according to the issue, but varies in this, that the jury find the said issue, with this addition, "if so many calves did happen in one year, and if not, to pay none."

The tithes of milk decreed in kind. And THE COURT ordered the defendant to pay to the plaintiff the values of the said milk, detained from him, in the three years in the answer mentioned.

WM. MONTAGU.
EDW. ATKYNS.

TRIN. TERM,
32. CAR. 2.

TATTERSHALL *against* OFFLEY,

Sussex, 7th July 1680.

The lands called *Possingworth*

Farm, in the pa-

rish of *Waldron*,

in the county of

Sussex, are not

discharged from

the payment of

tithes, as having

formerly belong-

ed to the abbey

of *Roberbridge*,

of the *Cistercian*

order.

THE plaintiff, as rector of *Waldron*, in the county of *Sussex*, filed his bill to have satisfaction for the values of certain tithes, from a farm within the said parish, called *Possingworth Farm*.

The defendant said, that the farm and lands, were parcel of the late dissolved abbey of *Roberbridge*, of the *Cistercian* order, and came to the crown by the dissolution of the monastery, and by mesne conveyances to the defendant; and that the abbot and convent, at its dissolution, by prescription, or otherwise by their being of the *Cistercian* order, were freed from the payment of tithes, whilst they enjoyed the same in their own hands, which privilege doth exempt the lands from payment of tithes to the plaintiff.

A trial at law was directed to be had upon the statute 2. & 3. *Edw.* 6. c. 13. for non-payment of tithes; the issue to be, whether tithes be payable for the said lands?

A trial was had, and a verdict passed for the plaintiff.

2d May 1681. THE COURT therefore ordered, that the defendant do pay and satisfy to the plaintiff six pounds, being the value of the tithes

tithes withheld from the plaintiff, within the time in the said bill mentioned.

TATTER-
SHALL
against
OFFLEY.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
T. STREET.

ASFORDBY *against* NEWCOMEN and Others.

MICH. TERM,
32. CAR. 2.

Lincolnshire, 11th November 1680.

THE scope of the bill was to compel the defendants to pay to the plaintiff, as rector of *Mablethorp St. Mary's cum Staine*, in the county of *Lincoln*, the tithes of several grounds occupied by the defendants, in the said parish, for three years past; and to compel the defendant *N. Newcomen* to pay eight pounds a year for eight acres of glebe, and the tithes of the same. The bill also stated, that the defendant *T. Newcomen* ought to have permitted the plaintiff to keep four cows and a mare, in a close called *Stainehill*, and to have paid to the plaintiff twenty shillings a year for *Staine church-yard*, lying open to *Stainehill*.

The rector of *Mablethorpe*, in *Lincolnshire*, claims tithes in kind, and 8l. a year for glebe land, and 20s. a year for the church-yard, with liberty to keep therein four cows and a mare.

The defendant *T. Newcomen* said, that he lived out of the parish, and was tenant of several closes in *Staine*; that there is a custom in *Staine*, for all persons living in or out of *Staine*, to pay threepence an acre *per annum*, and no more, in full satisfaction of all tithes, upon *Lammas Day*; and he denied that he hindered the plaintiff from keeping four cows and a mare upon *Stainehill*, if he hath a right so to do; but said, that the plaintiff, or his tenant, did keep three cows there, which he conceived to be in lieu of the church-yard, and that he ought not to pay the said twenty shillings a year.

The defendant *Newcomen* says, he lives out of the parish, and sets up a *modus* of 3d. an acre, in lieu of all tithes.

The defendants say, they are occupiers of several closes in *Mablethorpe St Mary's*, and that there is a custom there, for any person, living out of the said parish, who farms any lands within the same, to pay to the rector there, twelpence an acre *per annum*, for every acre called *new converted ground*, and fourpence an acre, *per annum*, for every acre of *ancient pasture*, in satisfaction for all tithes, upon the first day of *August*.

The other defendants set up a *modus* of 12d. an acre for new converted ground, and 4d. an acre for ancient pasture.

The defendant *N. Newcomen* denied that the said eight acres are *glebe land*, and averred that they are his own inheritance, and that therefore he ought not to pay any rent for the same.

The defendant's counsel, upon the hearing, insisted upon the several *modusses*, as set forth in the answer, and the plaintiff's counsel insisted that tithes in kind ought to be paid.

THE COURT, upon reading several depositions taken in the cause, and on long debate of the matter, was satisfied, and declared

The tithes of the land decreed in kind.

ASFORDBY declared, that there was no sufficient proof of any *modus*, or
against customary rate, or payment for the lands or grounds in *Staine*,
NEWCOMEN. but that tithes in kind ought to be paid by the defendant *T. Newcomen* to pay *Newcomen* for the same; and also that the said defendant ought
 13s. 4d. a year, to pay to the plaintiff thirteen shillings, and fourpence, *per*
 for the church- *annum*, for *Staine* church-yard, during the said time.
 yard.

As to the glebe lands, THE COURT leaves the same to be determined at law.

As to the ques- And as to the lands in *Mablethorp St. Mary's* held by the
 tion, whether defendants as foreigners, living out of the parish, and farming
 persons, living grounds in the parish, the defendants' counsel insisted, that
 out of the pa- the usage hath been to pay twelvepence an acre for *new*
 rish, are to pay *converted grounds*, and fourpence an acre for *ancient pasture*, and
 only 12d. an acre the plaintiff's counsel insisted upon the unreasonableness of the
 for *new converted* pretended usage or custom for such payment, so as to bar the
 ground, and 4d. plaintiff of his tithes in kind, and the rather because it appears
 an acre, for an that the inhabitants in *Mablethorpe*, who then held the same, or
 cient pasture; any other grounds in *Mablethorp St. Mary's*, ought to pay
 tithes in kind, and that foreigners ought also to pay tithes in
 kind for the same ground, if plowed or tilled.

a case is settled The Court ordered a case to be stated and agreed to by
 by the Lord counsel on both sides, and if they cannot agree to the same,
 Chief Baron, the LORD CHIEF BARON is to be attended to settle the same. A
 case was accordingly made and settled by THE LORD CHIEF
 BARON, and the Barons of the Court being attended therewith,

The question was, whether the usage alledged be reasonable
 in which the and consistent with the rules of law, so as to bar the plaintiff
 question was, from his tithes in kind? or, whether tithes in kind ought not
 whether such *mo-* to be paid to the plaintiff, for the lands and titheable matters in
modus be reason- question, notwithstanding such pretended usage?
 able.

THE BARONS, having had and taken full consideration of
 And the Court the said case, are all of opinion, and do unanimously declare,
 was unanimous- that the custom set forth in the answer, as to *Mablethorp St.*
 ly of opinion that *Mary's*, is unreasonable and contrary to law, and therefore
 the said customs ought not to bar the plaintiff of his tithes in kind (*a*).
 are contrary to law.

Before THE BARONS gave their opinion upon the case, the
 9th Feb. 1681. defendant *N. Newcomen* died, whereby all proceedings in the
 cause, as against him, ceased, and the plaintiff filed his bill of
 reversal against his son, and the proceedings were revived, pur-
 suant to order.

THE BARONS, having had and taken full consideration of the
 case, are all of opinion, and do unanimously declare, that the
 custom, set forth by the defendant's father, as to *Mablethorp St.*

(a) But see S. C. ante 166. and 183.; 2. November 1690, Mich. Term, 2.
 and the case of *Caxton v. Langton* post. Will. & Mary.

Mary's, is very unreasonable, and contrary to law, and therefore ought not to bar the plaintiff of his tithes in kind.

Asfordby
against
Newcomen.

IT IS ORDERED BY THE COURT, that the defendant do account for the same during his father's life time, and since his death.

And it is referred to the deputy remembrancer to take and report the same.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
T. STREET.

HEWLYN *against* WILDMAN.

HILARY TERM
32. CAR. 2.

Wiltshire, 11th February 1680.

THE vicar of *Wroughton*, in the county of *Wilts*, claims an annual payment or composition of forty shillings *per annum*, for his tithes, arising out a farm called *Leazes*, in the possession of the defendant.

The lands called *Leazes* in the parish of *Wroughton*, in the county of *Wilts*, are subject to a charge of 4cs. a year, to the vicar in lieu of all vicarial tithes arising thereon.

The defendant denied, that he knew of any such custom.

The Court was of opinion, that there hath been an ancient custom of paying forty shillings *per annum*, for the lands in the defendant's possession, to the vicars of the said vicarage of *Wroughton*, in discharge of all vicarial tithes for the said lands, and that the same has been paid for above sixty years; and therefore, it is ordered by the Court, that the defendant shall, upon notice of this decree, pay to the plaintiff eleven pounds, in full for the arrears of the said ancient yearly payment of forty shillings, for the said vicar's tithes, belonging to the said vicarage of *Wroughton*.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.

CAMELL *against* WARD.

TRIN. TERM,
33. CAR. 2.

Suffolk, 20th June 1681.

THE scope of the bill was to compel the defendant, being the executor of *John King*, to set forth and discover what yearly profit the testator made in his life-time, of a decoy of fowl, in the parish of *Worlingham*, in the county of *Suffolk*, which the plaintiff alledged the said *John King* had been occupier of for several years, and wherein he had yearly taken and killed ducks,

Tithes are not payable for a decoy of wild ducks, or for ducks or other fowl taken in a decoy, nor for the eggs of tame

ducks kept for the service of a mallards,

CAMELL
against
WARD.

mallards, teals, and other fowls, and had eggs therefrom ; whereby he made great profit, and ought to have paid to the plaintiff yearly, as rector there, the tithes thereof in kind, or made some composition to him for the same.

The defendant said, that he knew not that *John King* was ever owner or farmer of the said decoy, but believed that he was servant to *Sir John Duke*, the owner thereof, and gave him an account thereof ; that the said *decoy* was only of *wild fowl*, and that the plaintiff and his predecessors, never, since the making of the said *decoy* about forty years ago, had paid any tithes for the same, or made any satisfaction in lieu thereof.

Upon opening the bill and answer, and upon debate of the matter, it appeared to the Court, that the ducks taken in the said decoy were *wild ducks*, for which the Court was of opinion, that tithes are not payable ; and there being no proof of any custom for the payment of tithes for *ducks* and other fowl taken in decoys, or for the eggs of tame ducks kept for the service of the said decoy, the Court was also of opinion, that tithes ought not to be paid for the eggs of such ducks.

The bill therefore was dismissed ; but without costs.

WM. MONTAGU,
EDW. ATKINS.
WM. GREGORY.

TRIN. TERM.
33. CAR. 2.

MARGETTS *against* BUTCHER.

Northamptonshire, 13th June 1681(a).

The plaintiff claims the tithes of lamb, wool, and aftermath, in the parish of *King's Sutton*, in the county of *Northampton*.

THE bill stated, that for four years past, the plaintiff had been and then was farmer of the parsonage and rectory impropriate of *Sutton*, otherwise called *King's Sutton*, in the county of *Northampton*, and of all the tithes thereof; that there is an ancient custom within the said parish, that the occupiers of meadow and mowing grounds shall pay tithes of the *lattermath*, or *second crop* of grass, or herbage cut in the meadows there, whereof the tithes of the first crop of herbage there mowed were set out in grass, and not made into hay, by the occupiers of such meadow ground.

The defendants say no tithe is due of the *aftermath*.

The defendants, as to the tithes of the *lattermath*, said, that they had heard that the same had been sometimes paid by some land-holders, but that they believed it was paid in their own wrong, and confessed that they had themselves paid the same in their own wrong.

(a) This cause came first before the Court, on the ninth of *May* 1681, and was then ordered to stand over for the opinion of the Court.

The

The defendant *Butcher* said, that he rented six yard lands in the parish of *Astropp*, and had four acres of his own, and that three of the six yard lands, and the four acres, are in the parish of *Sutton*; that the messuage and the three other yard lands are in the parish of *Newbottle*, and that the small tithes belong to the vicar of that parish; that there are one hundred and forty-four sheep commons belonging to the said messuage and six yard lands, and none belonging to the four acres; that, in the first place, he sheared no sheep fed in the parish of *Sutton*, but sold several of them before shearing time, for every sheep whereof an halfpenny only was due by the custom of those parishes; that since, one year with another, he had sheared several sheep in the parish of *Newbottle*; that, during the time in the bill mentioned, he had sheared no sheep in the parish of *Sutton*; that every year he had several lambs of the ewes kept on the commons of the said farm; and he confessed that he did not pay the privy tithes of the said farm to the plaintiff, for that the sheep and cattle going on the commons of the said farm did feed, during the said term, for the most part of the year, on the waste and unknown grounds in *Astropp*, and for the rest of the year on the lands lying within the parishes of *Newbottle* and *Sutton*; that the waste and common grounds lie within the said parishes, and are unknown and undivided; that the defendant, residing in the parish of *Newbottle*, hath paid the vicar there all tithes of wool and lamb arising out of the said messuage and six yard lands, and is advised that he ought not to pay to the plaintiff any privy tithes for the lands in the parish of *Sutton*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides. The cause came on to be heard the ninth day of *May* last; and on debate of the matter,

THE COURT delivered their opinion, that as to the tithes of wool and lambs, the same ought to be paid rateably, according to the value of the lands which the defendants respectively held in each parish, and that they were respectively to account for the same, only that if there were any odd sheep or lambs under seven, there is, by the custom, only an halfpenny a sheep and an halfpenny a lamb due for the same to the vicar of *King's Sutton*, and nothing to the parson, and therefore for those odds the defendants are not to account, save only that where the sheep have been divided amongst the children, the defendants ought to account for the tithes of the lamb and wool of the said sheep rateably as aforesaid; the Court declaring that such gifts to children are fraudulent.

As to the tithe of the *after math*, or after crop of grass mowed, there being no custom or prescription alledged or set forth by the defendants in discharge thereof, the plaintiff's

P 2

counsel

MARGETTS
against
BUTCHER.

The defendant pleads that he kept his sheep and lambs on an undivided waste, or common between several parishes.

The defendants decreed to pay their lamb and wool rateably.

Practice of dividing sheep among children fraudulent.

As to the tithe of *aftermath*, the Court will further consider.

MARGETTS
against
BUTCHER.

counsel insisted, that the tithes thereof ought, by *common right*, to be paid to the plaintiff.

But the Court took time to advise of the same until the day after the term, when the Court declared, they would further advise touching the payment of the tithes of the said aftermath, or after crop of grass.

The cause now came on for their judgment therein, and after hearing counsel on both sides,

Tithes of *aftermath* is to be paid of *common right*.

THE COURT delivered their opinions *seriatim*, " that of
" common right, tithes of aftermath or of the after crop of grass
" mowed (there being no prescription or custom against, or in
" discharge of the same) ought to be paid and set forth by the
" defendants to the plaintiff."

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.

HILARY TERM
33. CAR. 2.

CLUVER *against* PULLEN.

Surry, 20th February 1681.

The vicar of *Croydon*, in *Surry*, is entitled to the tithes of *calves*, turnips, carrots, and onions in kind.

THE vicar of *Croydon*, in *Surry*, claimed tithes in kind of calves, carrots, turnips, and onions.

Upon hearing counsel on both sides, and reading several depositions, and on much debate,

THE COURT ordered and decreed, that the plaintiff ought to have tithes of calves in kind, for all calves fallen in the said parish of *Croydon*, and also tithes of all turnips, carrots, and onions, and such other matters sowed in the common fields, and elsewhere in the said parish.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.

TRIN. TERM,
34. CAR. 2.

KETTLEBY *against* CORBETT.

Herefordshire, 10th July 1682.

The rector of *Avenbury*, in *Herefordshire*, ordered to pay the vicar a yearly stipend of 7l. 6s. 8d. and to build him a convenient house, with a garden and orchard annexed, pursuant to the reservation in the original grant of the rectory, from the abbot of *Dorc*.

THE plaintiff, being vicar of the vicarage of *Avenbury*, in the county of *Hereford*, alledged, that the rectory of *Avenbury*, vicar a yearly stipend of 7l. 6s. 8d. and to build him a convenient house, with a garden annexed, pursuant to the reservation in the original grant of the rectory, from the abbot of *Dorc*.

I

being

being appropriated to the abbey and convent of *Dore*, in the said county, there was reserved to the vicar a competent maintenance by the bishop; that the bishop and abbot endowed the said vicarage with the rectory house, (excepting to the abbot the principal chamber, and the cellar, and one orchard, and a little house adjoining), garden, orchard, sixty acres of land, the tithe of hay, and all other small tithes; that afterwards the said rectory coming to the crown, king EDWARD THE SIXTH granted the same to one *Harford* and one *Farley*, reserving all the vicarial tithes, and three pounds a year, to be paid out of the said rectory to the vicar; that the defendant claims the said rectory, and all the lands and small tithes, and denies the said vicarage to be endowed with the same, or with any more than a yearly stipend of seven pounds, six shillings, and eightpence, and a small parcel of meadow ground called *St. Agatha's Meadow*.

KETTLERY
agamm
CORBETT.

THE COURT, on reading the copy of a special verdict and other exhibits, ordered the cause to be continued in the paper, and in the mean time THE LORD CHIEF BARON to be attended with a copy of the special verdict.

The Court on the twentieth of *November* 1682, upon full consideration had of the first endowment of the said vicarage, and also of several compositions made betwixt the abbots of *Dore* and the vicars of *Avenbury*, for the time being, and also of the said letters patent of *King Edward the Sixth*, all mentioned and found by the special verdict now produced, and also of several depositions taken in the cause, and several ancient terriers produced, DECLARED, that the plaintiff ought to enjoy the said meadow, called *St. Agatha's Meadow*, and to have and receive the said stipend of seven pounds, six shillings, and eightpence a year, and the arrears thereof since he came to be vicar there, and to have and enjoy the rectory house, garden, and orchard, as his predecessor did, and that the same house ought to be rebuilt by the defendant.

The evidence:

A commission was accordingly issued, under the seal of this Court, to commissioners to set out a convenient piece of ground, to build a convenient house for the vicar to dwell in, with a garden and orchard to the same, who are to certify the same to the court, with the costs and charges touching it.

A commission issued to fix on a proper spot for the vicar's residence.

Harding, 2. Eq.

See *Allen v. Ca. Abr.* 17.

A commission was awarded, and two of the commissioners certified, that they thought it convenient, that a house be built for the vicar of the said vicarage, in a parcel of land, called *the Lime Paddock*, lying between the highway leading from the town of *Bromyard*, to the church of *Avenbury*, claimed by the defendant, and that they had marked out and measured a certain part of the said parcel of land, which they conceived to be a sufficient parcel of land for the vicarage house to stand in, and

24th Nov. 1684. The commissioners certify the place, and the expense of building the same.

KETTLEBY
against
CORBETT.

to make a garden and orchard to the same ; that it will cost one pound, fifteen shillings, to make a sufficient fence in the said parcel of land ; and that the house will cost the sum of sixty pounds.

The cause now came on for further directions ; and on hearing counsel on both sides, and reading the said certificate, and on debate of the matter,

The defendant
ordered to build
the same.

IT IS ORDERED BY THE COURT, that the defendant do build a house on the ground set out by the said commissioners, according to their certificate, and that the defendant do convey the same, with the said garden and orchard, to some person, to be agreed on, for the vicar of *Avenbury* and his successors.

Costs.

And the Court will consider of costs, when the commissioners do certify that the house is built, and what it costs.

TRIN. TERM,
34. CAR. 2.

SALISBURY against WHITBY,

Sussex, 29th June 1682.

The vicar of
Hastings in *Sussex*, files his bill
against the wi-
dow and execu-
trix of his pre-
decessor, for *de-*
lapidations.

THE bill stated, that the plaintiff is vicar of the parish church of *Hastings*, in the county of *Sussex*, and ought to have the use and enjoyment of the vicarage house with the barns, &c. together with all tithes, rents, dues, and profits, thereunto belonging ; that the defendants husband, the late vicar, let the same go into great decay : and therefore he prayed relief in the premises.

The defendant
says, that the
court has no ju-
risdiction, for
that the 13.
Eliz. c. 10. f. 2.
has given it to
the *ecclesiastical*
court ;

The defendant answered and said, that the scope of the bill being to recover *dilapidations*, she is not obliged to answer the same ; and that this Court cannot take cognizance of such matters, as the statute 13. *Eliz. c. 10. f. 2.* directs the same to be recovered in the *ecclesiastical court*, and therefore she might have pleaded the said statute, but, for the satisfaction of the Court, she hath answered and admitted assents.

The plaintiff replied ; and issue being joined, witnesses were examined ; and upon debate of the matter,

and therefore
the bill is
dismissed.

IT IS ORDERED BY THE COURT, that the said defendant shall be, and hereby is dismissed this court, and from the matters and things in the bill, with costs since the putting in of the answer

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET,

LEIGH *against* CHADD.EASTER TERM
35. CAR. 2.*Bedfordshire, 14th May 1683.*

THE bill stated that *J. Duport*, clerk, parson and prebendary of the parish church of *Leighton Buzzard*, in the county of *Bedford*, being seised of the parsonage and prebend, and entitled to all tithes arising therein, by indenture dated the eighteenth of *July*, in the twenty-ninth year of *Charles the Second*, demised the same to the plaintiff, for three lives, at the yearly rent of seventy-six pounds, thirteen shillings, and fourpence, he paying to the vicar of the said church twelve pounds yearly; and that, being so seised, he ought to receive the tithes thereof.

The messuage and lands called *Mares* and *Gled*, in the hamlets of *Heath* and *Roach*, in the parish of *Leighton Buzzard*, in the county of *Bedford*, are tithe free.

The defendant answered, that he rented a messuage and lands called *Mares* and *Gled*, in the hamlets of *Heath* and *Roach*, in the said parish, and that he did not set out the tithes, or make any composition for the same, by reason that the said messuage and lands are tithe free, being part of the lands belonging to the abbey or priory of *Dunstable*, which was one of the greater monasteries.

THE COURT, upon hearing counsel on both sides, and on debate, ordered, that the said bill be dismissed with costs.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
T. STREET.

FOX *against* SHAWE;

AND

WRIGHT *against* SHAWE.TRIN. TERM,
35. CAR. 2.*Yorkshire, 25th June 1683.*

THE plaintiff *Fox* set forth, that, for seven years past, he had been impropriator of *Bradfield*, in the county of *York*, and was thereby entitled to two parts in three of all tithes both great and small within the said parish, and to the tithes of lambs; that the plaintiff *Wright*, being vicar of the said parish, claims one part in three of the said tithes.

The plaintiffs claim the tithes of lambs in *Bradfield*, in *Yorkshire*.

The defendant answered and said, that there was a custom in the said parish to pay for every lamb fallen within the said parish and sold after *lambling time*, and before *clipping time*, out of the parish, one halfpenny, in lieu of tithes, and no more.

The defendant sets up a *modus*.

An issue was directed to try the custom.

An issue directed.

here not reported
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A trial

Fox
against
SHAWE,
AND
WRIGHT
against
SHAWE.

5th May 1684.

The defendant
dismissed, and
plaintiff ordered
to pay 53l. 13s.
4d. for costs.

A trial was accordingly had, and a verdict, on full evidence passed for the defendant; but a new trial was ordered, upon the plaintiffs paying to the defendant twenty pounds costs, for the former trial; and on the second trial, a verdict, on full evidence, passed again for the defendant.

A new trial granted, and another verdict for the defendant.

THE COURT therefore ordered, that the defendant be dismissed of and from all the matters and things in the plaintiffs several and respective bills contained, and that the plaintiffs pay to the defendant fifty-three pounds, thirteen shillings, and fourpence, costs.

TRIN. TERM,
35. CAR. 2.

WOOD against BEAUMONT.

Yorkshire, 5th July 1683.

The vicar of
Sandall Magna,
in the county of
York, claims an
ancient pension
of 14l. a year
from the rector;
an annuity of
20l. a year is-
suing out of the
rectorial tithes;
certain custom-
ary payments in
lieu of small
tithes; and the
tithes of hay,
herbage and a-
gistment of cat-
tle.

Sir R. Beaumont,
being seised of
the rectory of
Sandall Magna,
gave all the tithes
thereof to L.
Wray, T. Pil-
lington, and T.
Wray in trust

THE plaintiff, as vicar of the parish and parish church of *Sandall Magna*, in the county of *York*, filed his bill against the defendants, being inhabitants, owners, and occupiers of messuages, lands, and tenements in *Criggleston*, a vill or township within the said rectory of *Sandall Magna*, setting forth, that by prescription, endowment, or other good title, there hath been an annual pension or sum of fourteen pounds a year due and payable to the vicar there, by the owners, proprietors, or occupiers of the rectory or parsonage impropriate, of *Sandall Magna*, and that the same hath been constantly paid to the plaintiff's predecessors, and ought to be paid to him; that over and above the said fourteen pounds a year, the vicar is entitled to the oblations and *Easter* offerings, and other personal tithes arising in the said township, and to all tithes and customary payments, and other rates in lieu of tithe milk, calves, fowls, honey, wax, hay, agistment, and herbage, within the said township; that there is, and hath been, time out of mind, a custom in *Criggleston*, that the inhabitants thereof have paid one penny for a cow, in lieu of tithe milk; one halfpenny for a calf, in lieu of tithe calves; threepence for a foal, in lieu of tithe foals and colts; and one penny for a swarm of bees, in lieu of tithe honey and wax; that they have also paid, for several tenements and farms in the said township, certain annual rates or payments for, or in the name, or lieu of tithe hay, herbage, and agistment, of their respective tenements and farms; that accordingly the plaintiff hath received the same, and is contented so to do; that Sir Richard Beaumont, being seised in fee of the said rectory of *Sandall Magna*, constantly paid the said fourteen pounds a year, and, being minded to encrease the vicar's maintenance, by will, dated the twenty-second of *August* 1631, gave all the tithes of corn and hay arising of and from divers lands within the said rectory, to pay the vicars of *Sandall Magna*, 20l. a year.

which

which were then enclosed and improved, to his nephews *Leonard Wray*, *Thomas Pilkington*, and *Thomas Wray*, and their heirs for ever, in trust, to pay twenty pounds a year to the vicar; that they neglecting to perform the said trust, *J. Stockport*, vicar there, in the month of *May*, in the tenth year **CHARLES THE FIRST**, sought relief from the then commissioners for charitable uses, and the then trustees were summoned, and ordered to pay to the vicar the said twenty pounds a year arising out of the tithes of corn and hay, pursuant to the will (a); that *Leonard Wray* sold his part of the tithes to *Thomas Pilkington* and *Thomas Wray*, who came to a partition, and that *Sandall Magna* was allotted to *Thomas Wray*, and the tithes of *Criggleston* to *Thomas Pilkington*, who have all along paid the said fourteen pounds a year in moieties; that the defendant *Elizabeth Wray*, widow of *Thomas Wray*, continued to pay her moiety; but that *Dame Mary Beaumont*, who hath an estate for life in the tithes of *Criggleston*, refused to pay her moiety; that the defendant having got the endowments and evidences relating to the premises, and the conveyances and titles of the small sums in lieu of tithe hay, herbage, and agistment, and the *Easter* book, wherein the said *modus*es are entered, she refuses to pay the said tithes, payments, and duties to the plaintiff. The vicar therefore prayed a general relief in the premises.

WOOD
against
BEAUMONT.

L. Wray sells his part to the other two trustees, who came to a partition, and

Dame Mary Beaumont has an estate for life in the tithes of *Criggleston*.

The defendants appeared and put in several answers; the plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides.

Now upon opening the bill and answers, and hearing counsel for all parties, and upon reading an inquisition taken in the reign of **QUEEN ELIZABETH**, upon a commission of charitable uses, concerning the said fourteen pounds a year; and the will of the said *Sir Richard Beaumont*; and a decree of the commissioners of charitable uses made in the tenth year of **CHARLES THE FIRST**, concerning the said twenty pounds a year, and upon reading the depositions of several witnesses taken in the said cause, and on full debate of the matter,

The evidence.

THE COURT is fully of opinion, and doth declare, that both the said fourteen pounds a year, and the said twenty pounds a year, are due and payable, and ought to be paid to the plaintiff, as vicar of the vicarage of *Sandall Magna*, and to his successors, in right of the said vicarage; and that one moiety of the arrears of the said fourteen pounds a year, and which incurred since the plaintiff became vicar, and during the life of the said *Lady Beaumont*, ought to be paid to him by the executors or

The pension of 14l. and the annuity of 20l. a year, decreed to the plaintiff;

(a) On the 22d June 1678, Trinity Term, 3. Jac. 2. *Jobson*, executor of *C. Stockport*, filed his bill against the execu-

tors of *Lady Beaumont*, &c. for arrears of the said stipend and annuity, and she was ordered to pay them.

admi.

Wood
against
BEAUMONT.

administrators of the said *Lady Beaumont* (a), and the other moiety by the said *Elizabeth Wray*; that, as well the arrears, as the growing duty of the said twenty pounds a year, ought to be paid from the time of the death of the said *Lady Beaumont*, by the owners, or other persons interested in the said rectory and premises charged or liable to the payment thereof.

and the pension
to be paid in fu-
ture.

AND THEREUPON IT IS ORDERED BY THE COURT, that the said annual sum of fourteen pounds shall, from henceforth for ever, be duly paid and answered to the plaintiff and his successors, vicars of *Sandall Magna* for the time being, claiming under the said *Sir Richard Beaumont*, by four quarterly payments, according to the said inquisition, which mentions also the endowment of the said vicarage.

The annuity al-
so to be paid in
future.

AND IT IS FURTHER ORDERED BY THE COURT, that the yearly sum of twenty pounds, devised by the will of the said *Sir R. Beaumont*, shall, from henceforth for ever, be duly paid and answered to the plaintiff and his successors, vicars of *Sandall Magna*, by the owners and occupiers of the tithes of corn arising within the said inclosed and improved lands and grounds within the said rectory of *Sandall Magna*, according to the said will.

The payment in
lieu of small
tithes decreed to
the plaintiff.

And as to the customs in *Criggleston*, for payment of one penny for a cow, in lieu of tithe milk; one halfpenny for a calf; threepence for a foal; and one penny for every swarm of bees in lieu of honey and wax; the same being fully proved in the cause to be due, and that the same, for sixty years, have been constantly paid to the vicars of *Sandall Magna*, they are hereby ratified and confirmed; AND IT IS HEREBY DECREED, that the same, for the future, shall be paid to the plaintiff and his successors; and that the defendants, the inhabitants of *Criggleston*, shall pay all the arrears due to the plaintiff, without costs.

Issues directed to
try the *modus* re-
specting the tithe
of hay, herbage,
and agistment.

And as to the several *moduses* and customary payments, mentioned in the bill, and set forth in the defendants, the inhabitants, answer, in lieu of tithe hay, herbage, and agistment, upon their several and respective tenements; THE COURT ordered six several trials at law to be had touching the same, wherein the defendant *Richard Beaumont* is to be plaintiff, who, by consent, is forthwith to nominate three of the defendants, being the best farmers or owners of lands in *Criggleston*, with whom he will try the right of the several *moduses* and customary payments by them alledged to be in lieu of tithe hay, herbage, and agistment arising upon their respective farms or tenements in *Criggleston*, and that

(a) On the 30th of November 1686, Michaelmas Term, 1. Jac. 2. the plaintiff filed his bill against the executors. and the Court ordered them to pay 24l 10s. for three years and a half arrears of the moiety of the 14l. a year; and all the arrears of

her moiety of the 20l. a year, out of the tithe corn of the lands in *Criggleston*, received by her, during the said three years and a half, that the plaintiff was vicar of *Sandall Magna*, before her death.

the plaintiff *Wood* nominate three other of the defendants, being the next best farmers or owners of lands in *Criggleston*, with whom the defendant *Beaumont* is also to try the right aforesaid; and the several issues are to be, “whether the respective sums, by the defendants in their answers respectively alledged to be the *modus*, payable in lieu of tithe hay, herbage, and agistment, for their several and respective farms, hath been, time out of mind, paid by the owners or occupiers of such farms so put to issue, in lieu of all tithe hay, herbage, and agistment, arising in their respective farms in *Criggleston* aforesaid, or not?” And the rest of the *modus* alledged in lieu of tithe hay, herbage, and agistment, by the other defendants, are to attend and go according to the event of the said trials; and, in case the defendant *R. Beaumont* shall fail or neglect to try the same at the next assizes, then this Court doth hereby declare, that they will, at the plaintiff’s request, decree to the plaintiff each particular *modus*, payable by the said defendants, for and in lieu of tithe hay, herbage, and agistment, according as by the bill, and the answer of the inhabitants are set forth; and that then they will consider of costs; the equity as to the same to be reserved.

WOOD
against
BEAUMONT.

The issues stated.

The cause now came on for a further hearing, and the plaintiff’s counsel informing the Court, that the defendant *Richard Beaumont* had wholly neglected to nominate three defendants, to try the issues for settling the right of the said *modus*, prayed that the said *modus* might be established by the decree of this Court, to be paid to the plaintiff.

The defendants neglect to try the question.

And upon debate of the matter,

IT IS THIS DAY ORDERED, &c. BY THE COURT, that the said several *modus* or customary payments, for and in lieu of tithe hay, herbage, and agistment, within the township of *Criggleston*, in the defendants, the inhabitants, answer particularly and respectively set forth, shall be and are hereby settled to be due and payable from the said inhabitants respectively, for and in respect of their said several and respective farms, lands, and tenements in *Criggleston* aforesaid, to the plaintiff and his successors, vicars of *Sandall Magna* for the time being; and that the said defendants, the inhabitants, shall pay to the plaintiff all arrears, and for the time to come shall pay the same to the plaintiff and his successors, vicars there, unless cause be shewn by the defendants *Richard Beaumont* and *W. Hardcastle*, and his wife, they first paying five pounds costs; and then the Court will consider of further costs to be paid to the plaintiff.

22d Nov. 1683.
The several *modus* in lieu of tithe hay, herbage, and agistment, decreed *missi*.

The cause came on according to the said order, when the defendants prayed time to consider, whether they would try the

7th Feb. 1683.
The defendants pray time to consider whether they will try the issues;

said

WOOD
against
BEAUMONT.

saïd issues, on their undertaking to pay the arrears of the saïd pension and annuity, and to stay proceedings in the spiritual court of *York*.

but neglect to
comply with the
order of the
court.

But afterwards the plaintiff's counsel informed the Court, that the defendants had not complied with the saïd orders, and prayed that the several *modus*es and customary payments, or rates for and in lieu of tithe hay, herbage, and agistment within the saïd township of *Criggleston*, for the several and respective farms in the saïd defendants, the inhabitants, answers particularly set forth, might be settled by the decree of this Court, to be for ever hereafter paid to the plaintiff and his successors, vicars of the parish and parish church of *Sandall Magna*.

A perpetual in-
junction award-
ed to quit the
plaintiff in the
possession of the
several matters
decreed to him.

IT IS THEREUPON THIS DAY FINALLY ORDERED, &c. by the Court as prayed, and that a perpetual injunction shall forthwith be awarded, under the seal of this Court, for quieting the plaintiff in the possession of the matters hereby decreed to him, and for stay of all proceedings in the ecclesiastical court of *York* had or made against the saïd plaintiff, or any of the inhabitants, defendants, touching any of the matters or things settled by order and decree of this Court.

AND IT IS ORDERED by the Court, that the saïd defendants *Beaumont* and *Hardcastle* shall pay to the plaintiff his costs of this suit, to be taxed; and it is referred to the deputy remembrancer to tax the same.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.

TRIN. TERM,
35. CAR. 2.

HALL against BAEB.

Devonshire, 5th July 1683.

Tithes are due
for the *after-*
math of clover
grass, but not
for the after
feeding and de-
pasturing.

THE bill stated, that the plaintiff had been rector of the parish and parish-church of *Upton Pine*, in the county of *Devon*, for five years past, and ought to have received all tithes and customary payments for the same, and particularly the tithes of the *aftermath* of clover grass.

The defendants saïd; that no tithes ought to be paid for the second mowing of clover grass; which was the only dispute in the cause.

THE COURT, upon hearing counsel on both sides, are of opinion, that the tithes of the *aftermath* of clover grass are due,
and

and ought to be paid, but not for after-feeding and depasturing.

HALL
against
BARR.

WM. MONTAGU.
WM. GREGORY.
THO. STREET.

WIGHTWICK *against* GIFFORD.

MICH. TERM,
35. CAR. 2.

Staffordshire, 19th November 1683.

THE scope of the bill was, to be relieved for the tithes of a messuage called *Black Ladies*, and ten acres of land belonging to the same, in the parish of *Brewood*, in the county of *Stafford*.

The messuage, and ten acres of land, called *Black Ladies*, are in the parish of *Brewood*, in the county of *Stafford*.

A trial at law was directed upon the statute 2. *Edw. 6.* for not setting out the tithes of the said messuage; the only question to be, whether the said messuage called the *Black Ladies*, and the lands belonging to the same, are situate, lying, and being, within the parish of *Brewood*, or not?

A trial was had, and a verdict was given for the plaintiff, no evidence being given for the defendant. A new trial was granted, upon payment of costs, to be had at the bar of this court by a *Staffordshire* jury; and on full evidence given on both sides, a verdict was again given for the plaintiff.

THE COURT therefore ordered the defendants to satisfy and pay to the plaintiff the value of the tithes of all the lands in question.

THOMPSON *against* WRIGHT.

MICH. TERM,
35. CAR. 2.

Somersetshire, 26th November 1683.

THE plaintiff, as vicar of the vicarage and parish-church of *Bedminster*, in the county of *Somerset*, with the chapels of *Saint Mary Radcliffe*, and *Saint Thomas*, in *Bristol*, and *Abbots Leigh* annexed, filed his bill, stating his title to the *small tithes* and offerings arising therein.

The vicar of *Bedminster*, with the chapelry of *Saint Mary Radcliffe* annexed, claims the *small tithes* arising therein.

The defendants confessed the plaintiff to be vicar as aforesaid, and that he ought to have and receive the tithes, as the former vicars had.

The defendant *Wright* said, that he was an inhabitant of *Saint Mary Radcliffe*, and kept a common inn there; and that he held, within the impropriation of *Knoll*, in the said parish of *Bedminster*, certain lands called *Marr Meades* and *Pyle Hills*, part whereof he mowed and made into hay, and part he fed with carriers horses, and paid the tithes thereof to the owners of the impropriation of *Knoll*; and that he also held other lands in the said parish.

The defendant *Wright* says, he is a common inn-keeper in *St. Mary's*, and holds lands in *Knoll*, in the parish of *Bedminster*, and has paid his tithes to the rector of *Knoll*.

The

THOMPSON
against
WRIGHT.

The defendant
Priest says, he
has depastured
cattle in *Bed-*
minster.

The question
was, whether
the tithes of the
lands in *Wright's*
possession are
payable to the
impropriator of
Knoll, or to the
vicar of *Bedmin-*
ster.

The bill, as a-
gainst *Wright*,
dismissed, with-
out prejudice to
the plaintiff's ti-
tle.

The defendant
Priest ordered to
pay tithe for the
agistment of
barren cattle to
the plaintiff.

The defendant *Priest* confessed that he held and rented two closes, called *Portinghams*; that he had depastured part thereof, and of the other part had made the grass into hay; and said, that the tithe hay, if any were due, belonged to the parson of *Bedminster*, and not to the vicar.

The plaintiff replied; and witnesses were examined.

Upon opening the bill and answer, and reading several depositions, and hearing counsel on both sides; and the defendant *Wright's* counsel only insisting upon the question, whether the tithes arising in and upon the said closes called *Marr Meads* and *Pyle Hills* were payable to the owner of the impropriation of *Knoll*, or to the plaintiff? which closes the plaintiff's counsel alledged to be parcel of the farm called *Paradmeads*; and it appearing, by the plaintiff's proof, that tithes had been paid for the said farm to the former vicar of *Bedminster*;

IT IS ORDERED BY THE COURT. that the bill, as to the defendant *Wright*, do stand absolutely dismissed, without costs, and without prejudice to the plaintiff's right to small tithes which hereafter shall arise upon the said several closes of ground called *Marr Meads* and *Pyle Hills*, or any of them.

And as to the tithes demanded by the plaintiff of the defendant *Priest*, arising in and upon the several grounds in his occupation, forasmuch as it appears to the Court that the same are due to the plaintiff,

IT IS FURTHER ORDERED, that the said defendant shall account with, and satisfy the plaintiff for all the tithes of agistments, and the feeding and depasturing of barren and unprofitable cattle, and other small tithes, which have yearly renewed and increased in and upon the several and respective grounds confessed in his answer to be occupied by him within the said parish; and it is referred to the deputy remembrancer to take the said account, and report the same (a).

(a) See other causes relating to this parish. *Cox v. Livesay*, 18th February 1675, 27. Car. 2. ante, page 152; *Horton v. Higginbottom*, post. 22d

June 1703, Trinity Term, 2. Anne; and *Gibbs v. Goodmap*, post. 4th June 1733, Trinity Term, 7. Geo. 2.

HILARY TERM
35. CAR. 2.

FISH against WIMBERLEY.

Lincolnshire, 4th February 1683.

Coleseed, though
sown in fields,
and in large
quantities, is a
small tithe.

THE plaintiff, as vicar of the vicarage and parish-church of *Gedney*, in the county of *Lincoln*, demanded the tithe of *coleseed*.

The defendant *Wimberley* acknowledged, that since the plaintiff's induction he had occupied in the said parish several acres of
new-

new-improved lands, and had reaped therefrom *coleseed*, the tithes whereof he did not set forth to the plaintiff, because, by law, he should not have been charged with any for seven years to come.

FRIN
against
WIMBERLEY.

The defendant *Waterfall* confessed, that he had reaped several acres of *coleseed*, the tithes whereof he did not set out to the plaintiff, because it was newly improved ground, and he had agreed with the plaintiff for the tithes of the *coleseed* for ten pounds; and that he believed *coleseed* was a *great tithe*, and belonged to the rector of *Gedney*, and not to the vicar.

Upon reading the endowment of the said vicarage, dated in the year 1209; and also the depositions of witnesses taken on both sides, it plainly appeared to the Court, as well by the endowment as by the testimony of the said witnesses of the usage there, that the vicar of the said parish was endowed with, and accordingly did always, from time to time, receive and take, not only all manner of small tithes within the said parish, but also all tithes whatsoever, other than the tithes of corn; and that the rector had the tithes of corn only, and no more, within the said parish.

And upon debate of the matter, the Court delivered their judgment unanimously, that the tithe of *coleseed* is a *small tithe*; and that the plaintiff being endowed with or being possessed of all manner of small tithes within the said parish,

IT IS ORDERED BY THE COURT, that the defendant *Wimberley* do forthwith satisfy and pay to the plaintiff the value of the tithes of the *coleseed*, which he inned in the said year; and that it be referred to the deputy remembrancer to state the values thereof; and that the defendant *Waterfall* do pay to the plaintiff ten pounds, in full for his tithes of *coleseed* according to agreement; with three pounds for his costs.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.

TROUTBECK *against* LAWSON.

Cumberland, 5th May 1684.

EASTER TERM,
36. CAR. 2.

THE plaintiff, as rector of the rectory and parish-church of *Downes*, in the county of *Cumberland*, demanded of the defendants tithe in kind of corn and hay growing upon several lands and tenements within the said parish in their possession, which they had detained from him for several years past.

The rector of
the parish of
Downes, in *Cum-*
berland, demands
tithes in kind.

paid

TROUTBECK
against
LAWSON.

The defendants
plead certain *modus*
for the re-
spective lands in
their possession.

The several pay-
ments stated.

The defendants answered, and said, that no tithe in kind for corn and hay was due or payable within the said parish to the rector there, but only a *modus* or certain sum of money by way of prescription, except for the township of *Downes*, which always paid tithe corn and hay in kind, and insisted on a *modus* payable in lieu of tithes for their lands, viz. for two tenements of the defendant *Lawson's*, containing thirty acres, and lying within the township of *Whitrigg*, within the said parish, ten shillings and fivepence; for two tenements of the defendant *Wilson*, twenty acres, lying in the townships of *Langroft* and *Amthorne*, within the said parish, ten shillings and twopence; for a tenement of the defendant *Winder*, fourteen acres, lying in *Whitrigg*, five shillings and twopence; and for the defendant *Farlam's* tenement, in *Whitrigg*, sixteen acres, eight shillings and sixpence.

The *nones* of
this parish, taken
in the reign of
Edward the
Third, read in
evidence.

The Court, on
account of the
largeness of the
modus, order a
search to be made
for precedents.

Upon opening the pleadings, and reading the *nones* of this parish, taken in the fourteenth year of *Edward the Third*, concerning the valuation of the *nones* of corn, wool, and lamb, of the church of *Downes*; and also a record in the custody of the remembrancer of the first fruits, touching the tithes and profits of the said rectory of *Downes*, taken in the twenty-sixth year of *Henry the Eighth*; and upon reading some proofs concerning the payment of the respective *modus* or sums of money set forth in the answer; and upon debate of the matter; the Court taking notice of the greatness of the *modus*, or payments alledged by the defendants to be in lieu of the tithes of corn and hay of their respective tenements, in respect of the yearly values of the same,

IT IS ORDERED BY THE COURT, that the cause stand over; and in the mean time the Court are to be attended with precedents where great *modus* near the values of the tithes have been referred to trials at law.

29th June 1684.
The payment of
the several *mo-*
di decreed.

THE COURT having been attended with precedents pursuant to the said order; and now on debate of the matter, the defendants by their answers having offered to pay the sums set forth as *modus* or prescription money, doth think fit, at present, to decree the payment of the *modus* or prescription money set forth in their answer to be paid to the plaintiff, as heretofore hath been usual.

IT IS ORDERED BY THE COURT, that the said defendants do pay to the plaintiff the same accordingly; and that costs are to be spared on either side.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.
DEWES

DEWES *against* TREDWELL.EASTER TERM,
36. CAR. 2.*Oxfordshire, 1st May 1684.*

THE bill stated, that for ten years past the plaintiff had been farmer of the impropriate rectory or parsonage of *Swacliffe*, in the county of *Oxford*, by virtue of several demises from *Saint Mary's College*, in *Oxford*, and ought yearly to receive of the farmers and occupiers of lands therein, and the titheable places thereof, all the tithes of corn, grass, hay, wool, and lamb, which ought to be justly set out and paid.

The owners of the three closes called *Swacliffe Grange*, in *Oxfordshire*, only pay 2d. a-year for each of the said closes that are mowed, in lieu of tithe hay.

The defendant said, that for about eight years past he had rented lands or enclosed grounds, called *Swacliffe Grange*, in the said parish; and that the way of tithing had been as follows, viz. the owner of the rectory had received the tithe *corn* arising off the said grange, and likewise the tithes of *wool* there; and the vicar or incumbent had constantly had a rate tithe for all *hay* that had been mowed within the said lands called *the Grange*, viz. for every close within the said parcel of land called *the Grange* twopence yearly; that the land from which he cut the said hay did, for the greater part, lie in three closes; and when it lay in three closes, he paid for the same sixpence each year, viz. twopence for each close; and when but two closes were cut then only fourpence; and he conceived that he was, by his paying of twopence for every close he mowed in the said *grange* to the vicar, discharged of any tithe hay there to the rector.

A trial at law was ordered on this issue, whether the owners of the said premises called *Swacliffe Grange*, time out of mind, have yearly paid, or ought to pay, to the vicar of *Swacliffe* for the time being, twopence only, in satisfaction and discharge of the tithe hay in kind of every close yearly mowed, parcel of the premises called *the Grange*.

In pursuance whereof the said matter was tried, and a verdict was given for the defendant; but the plaintiff's counsel informing the Court that the verdict was contrary to the direction of the Judge, and the Judge who tried the same having informed THE LORD CHIEF BARON that it was contrary to his direction, the Court ordered the matter to be tried *de novo* by a special jury; and the defendant to have his costs for the last trial.

21st May 1685.

In pursuance of the said order, a new trial was had, and a verdict was given for the defendant, as appeared by the *postea*, now read in court.

10th Nov. 1685.

THE COURT therefore ordered, that the bill shall stand dismissed, with moderate costs.

EASTER TERM,
36. CAR. 2.

EVE *against* WIGHTWICK.

Kent, 1st May 1684.

The rector of *Midley*, in *Kent*, claims 18. an acre in lieu of the tithes of all pasture grounds in the defendant's possession.

The defendant denies the custom, and says, he has 420 acres of pasture in *Midley* and *Old Romney*, and that he paid 18l. a-year in *Romney*, and 14l. a-year in *Midley*, in lieu of all tithes ;

and that the rector of *Romney* claimed the tithes.

The plaintiff replies, that the tithes he demands are not within the tithing of *Romney*.

The Court, on reading a composition between the rector of *Midley* and *Old Romney*,

decreed the defendant to pay 18. an acre to the rector of *Midley*, and 4l. a-year to the rector of *Old Romney*.

THE bill set forth, that the plaintiff is lawful rector of *Midley*, otherwise *Middleley*, in the county of *Kent*, and entitled to all tithes, compositions, and customary payments, belonging to the said rectory ; that the plaintiff's predecessors had had one shilling by the acre in lieu of tithes for all pasture ground in the said parish.

The defendant denied all knowledge of any custom for payment of one shilling an acre for the tithe of all pasture land within the said parish ; but said, that he used four hundred and twenty acres of pasture land in the parish of *Midley* and *Old Romney*, but which lands lay in *Midley* he knew not ; that for several years together, so long as *W. Carr*, who was then rector of *Old Romney*, lived, he paid him eighteen pounds *per annum* for tithes of all the said lands ; and after his death, he paid, several years together, fourteen pounds *per annum*, for the tithes of part of the said lands, to the then rector of *Midley* ; and for some years he paid to the then rector of *Old Romney* four pounds *per annum*, in lieu of the tithes of the residue of the said land ; that the rector of *Old Romney* claimed the said tithes.

The plaintiff put in a special replication ; and thereby said, that the lands used by the defendant in the parish of *Midley* were four hundred and twenty acres ; and that if the rector of *Old Romney* did claim the tithe of the said lands, yet the same were not within the tithery or titheable places thereof.

Upon hearing counsel on both sides ; and reading the depositions of several witnesses taken in the cause ; and a copy of a composition, dated the fifteenth of *February* 1547, made between *M. Colyn*, then rector of *Midley*, and *E. Sponer*, then rector of *Old Romney*, and remaining in the registry of the prerogative of the archbishop of *Canterbury* ; and upon much debate ;

IT IS ORDERED BY THE COURT, that the defendant shall forthwith satisfy and pay to the plaintiff twenty pounds, viz. twelve-pence an acre, for four hundred acres of pasture land lying in the parish of *Midley*, in the defendant's occupation ; and that the defendant do forthwith pay to the rector of *Old Romney* four pounds *per annum* for all the lands mentioned in the aforesaid composition ; and that the said defendant shall not pay costs in this cause, the rector of *Old Romney* being present in court, and consenting to accept the said four pounds *per annum* for all the lands in the said composition, for such time as the plaintiff had been, and should continue to be, rector of *Midley* aforesaid.

WM. MONTAGU.

WM. GREGORY.

ATTERBURY,

ATTERBURY, D. D. *against* TURNER, Knt.

AND

LORD NOTTINGHAM *against* ATTERBURY.TRIN. TERM,
36. CAR. 2.*Buckinghamshire, 23d June 1684.*

THE plaintiff, as rector of the parish-church of *Milton*, otherwise *Middleton Keynes*, in the county of *Buckingham*, by his bill stated, that he, for many years, had been, and still is rector and lawful incumbent of the said rectory, and was entitled to the *glebe lands*; that parcel of the said rectory, lying in *Milton*, containing thirty-nine acres, whereof one piece, called *Chapel Close*, containing one acre and a half, and another piece called *Rye Croft*, containing four acres and a half, remained in the plaintiff's possession; that other parcels, containing thirty-three acres, are in the possession of the defendants; that he was also entitled to several *commons* to be taken in the meadows, fields, lands, and pastures of the manor of *Milton* for four horses, ten beasts, and thirty sheep, the said right of common being yearly worth forty pounds; that he had also yearly taken, in the meadows, thirty jogs or loads of hay; and that he ought to have and enjoy all manner of tithes arising within the said parish *in kind*, and in particular in the fields called *Ten Pound Close*, *Great Pasture*, *Lady Mead*, and *Little Ham*, lying within the said parish; that about the year 1593 there was an exchange and agreement made between *J. Stafford*, then lord of the said manor, and *R. Smith*, then rector there, as stated in the bill; that the said *R. Smith*, during his life and to the year 1640, permitted the substance of the said agreement to continue after the death of the said *J. Stafford*; that the plaintiff, being intitled to the said rectory, and finding that the lands set out by the lord of the manor in lieu of the ancient *glebe* were not the same in quantity with the ancient *glebe* by six acres and a half; and that the said composition was made when the lands of the manor were let for about the value of three hundred pounds a-year, which lands are now let for near two thousand pounds a-year, intreated the present owners to restore to the church its proper rights, which they have not only refused to do, but have entered on thirty-three acres and a half of *glebe* land, and taken the profits thereof, under a pretence that the said agreement was perpetual; that they have also entered on *the Dove House*, and have refused to give the plaintiff forty shillings a-year in lieu thereof, and have let the aforesaid closes to tenants who have subtracted their tithes of hay and of grafs, and refused any sort of payment for the same for several years past. The plaintiff therefore prayed a full discovery of their right and title, and relief in the premises.

Dr. Atterbury, as rector of *Milton*, in the county of *Buckingham*, claims *Chapel Close*, *Rye Croft*, and thirty-three acres of land, as belonging to the *glebe* of the rectory;

a right of common for four horses, ten beasts, and thirty sheep;

the liberty of taking thirty loads of hay;

and tithes *in kind* of *Ten Pound Close*, *Great Pasture*, *Lady Mead*, and *Little Ham*;

and states, that an agreement was made between a former rector and the lord of the manor, under which the ancient *glebe* lands were inclosed and exchanged;

but that the said exchange was not fairly executed, and was detrimental to the church.

He also claims a *dove-house*, or 40s. a-year in lieu of it.

The defendants admitted the plaintiff *Dr. Atterbury* to have been rector of the said parish for the time in the bill mentioned,

The defendants deny the charges in the bill;

but

ATTERBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTERBURY.

and state, that certain yearly payments are, by prescription, to be paid to the rector, in lieu of the tithes of *Ten Pound Close*, *Great Pasture*, and *Lady Mead*; and that *Bird's Mead* was exchanged for *Little Ham*; and deny that they have built any cottage on the homestall; or taken any orchard out of *Chapel Close*; or that he has any right to *Sawpit Yard*.

They also state a conveyance of the manor in trust.

but denied knowing where the glebe lands lay; and said, that the plaintiff might be entitled to such tithes as in the bill are set forth. But they positively denied that he was entitled to any common or pasturage to be taken in the fields of the said manor or parish, or to any composition in lieu thereof, other than what he at present enjoyed; or that he or his predecessors had or ought to have, in any meadows parcel of or belonging to the said manor, any quantity of hay whatsoever; or that he, in right of his said rectory, ought to have any tithes in kind whatsoever, coming, &c. within the several fields aforesaid. And they insisted, that, during all the time whereof the memory of man is not to the contrary, there had been paid to the rector or parson of the said rectory for the time being, by the owners or occupiers of the said fields or closes, the following annual sums, for and as a rate tithe, and customary payment in lieu of all tithes arising, &c. on the said closes, viz. twenty shillings a-year for *the Ten Pound Close*; three pounds a-year for the *Great Pasture*; and six shillings and eightpence a-year for *Lady Mead*; and that the rector of the said parish had enjoyed, time out of mind, a small parcel of meadow in a place called *Bird's Meadow*, in lieu of all tithes from *Little Ham Meadow*. They said also, that they believed the agreement between the lord of the manor and the rector was made and entered into as stated in the bill; and that the said agreement was beneficial to the rectory. As to the dove-house, they confessed that they had, under the title in the bill set forth, entered into the same, and taken the profits thereof; but they denied that they had disturbed the plaintiff in the enjoyment in any of the exchanged premises, or of any commons or pasturage, or that they had built any cottage in the homestall of the parsonage-yard, or taken any orchard out of *the Chapel Close*, or that, to their knowledge, *Sawpit Yard* was enjoyed by the plaintiff's predecessors; and averred that it had been, time out of mind, part of the wastes of the manor. They then set forth a conveyance of the said manor from *W. Stafford* to them for eleven thousand years, under certain trusts. The defendant *H. Stafford* also set forth a settlement of inheritance of the said manor upon himself in tail, with divers remainders over. They confessed the letting the aforesaid closes, and that they had not paid tithes in kind to the plaintiff, but alledged that they had paid to him the several rates aforesaid; and insisted thereupon. And they prayed, that *the Inclosure*, after so long a space of time, and after such great charges had been incurred by inclosing the same, might not be laid open; the rectory and the glebe now enjoyed by the plaintiff being better than it was before the said inclosure.

The plaintiff replied; and witnesses were examined.

The cause came on to be heard the twenty-sixth of *January*, in the twenty-second year of his present majesty's reign; and upon full

full and solemn hearing whereof, the Court referred the matter in question to a *trial at law* in a special action upon the case, the plaintiff to declare, "That whereas the defendants *R. Smith* and "three others, being possessed of *Ten Pound Close*, of which " *Buckingham Way*, *Foddering Yard*, and *Wrenn Park* are parcel, "and likewise of lands called *Great Pasture*, whereof eighty "acres, called *the Warren*, are parcel, and of *Lady Mead* and " *Little Ham*, the said defendants did promise, that if tithes in "kind were due for the same land, they would pay for the "same."

A trial was accordingly had. It was admitted by pleading, and by the parties, that *tithes in kind* were payable for the close called *Buckingham Way*, being two acres, and for *Foddering Yard* six acres and a half, and for *Wrenn Park* three acres and a half, and for *the Warren* seventy-four acres, parcel of the close called *Great Pasture*; and a verdict, upon long and full evidence on both sides, passed for the defendants in all the issues, in affirmance of all the said customary payments, and discharge of tithes set forth in the answer, save what was admitted by pleading as aforesaid to pay tithes in kind.

But in the *Easter Term* following, upon the plaintiff's motion, it was ordered, that there should be a *trial at bar* of this court upon the same issues.

And the Court being informed that all the defendants, except *J. Smith*, were dead, it was, on the thirty-seventh day of *June*, in the thirtieth year of his present majesty's reign, ordered, by consent, that the defendant *H. Stafford*, owner of the premises, should stand and be in the place of the defendants that were then dead, without any *bill of revivor* for that purpose.

manor defendant, to prevent a

In pursuance of which orders the plaintiff declared, and the defendants pleaded; and the cause came on the twenty-fourth of *November* following upon the said issues before a jury of the county of *Buckingham*. Upon which trial (there being the same admissions as before) THE JURY found, FIRST, That as to *Ten Pound Close* (whereof *New Close* is parcel) the sum of twenty shillings was, time beyond the memory of man, paid, and is payable to the rector of *Milton* aforesaid for the time being, in full satisfaction of all tithes thereof; SECONDLY, as to the close called *the Great Pasture* (not including the seventy-four acres now called *the Warren*, in *Wadd Ground*) the jury found, that sixty shillings a year are payable to the rector for the time being, in full satisfaction of all tithes thereof; THIRDLY, as to the close called *Lady Mead* the jury found, that six shillings and

Q 3

eightpence

ATTERBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTERBURY.

An issue directed to try, whether *Ten Pound Close*, *Great Pasture*, *Lady Mead*, and *Little Ham*, are to pay tithe in kind.

The defendants admit, that *Buckingham Way*, *Foddering Yard*, and *Wrenn Park*, parts of *Ten Pound Close*, and *the Warren*, part of *Great Pasture*, pay tithes in kind.

A verdict, as to the remainder, for the defendants.

But a *trial at bar* is ordered;

and all the defendants being dead, except *J. Smith*,

the Court, by consent, make the lord of the bill of revivor.

The jury find, that 20s. a year are payable for the remainder of *Ten Pound Close*; 60s. a year for the remainder of *Great Pasture*; 6s. 8d. a year for *Lady Mead*; and tithes in kind for *Little Ham*.

ATTREBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTREBURY.

But the *Earl of Nottingham*, having purchased the manor, files a cross bill to have the *inclosures* and the *inclosures* established.

Dr. Asterbury states, that 5l. a-year were paid to him after the *inclosures*, in lieu of his right of common; and prays the agreement to *inclosure* may be vacated.

eightpence are payable yearly, in full satisfaction for the tithes of that close; FOURTHLY, as to the close called *Little Ham* the jury found, that *tithes in kind* are payable for the same to the rector of the parish of *Milton*.

But the *Earl of Nottingham*, having purchased the manor of the defendant *H. Stafford* and his trustees, filed his cross bill against *Dr. Asterbury* and his lessee, and the *Bishop of Lincoln*, stating his title to the said manor; the agreement and exchange of lands; the customary payments; the verdicts, and other proceedings; and prayed that the said rate tithes and customary payments, the exchange, and the *inclosure*, might be established, by the decree of this court, for ever; and that the defendants might answer the premises.

The defendant *Dr. Asterbury* admitted the *Earl of Nottingham's* title to the manor, and the said exchange, agreement, *inclosures*, and enjoyments accordingly; and stated, that five pounds a-year, for many years after the said exchange had been made, and before he became rector, and afterwards, had been paid for the *commons*; and that the lord of the manor and his tenants, for six years after he became rector, rented their tithes of him; but that he afterwards, conceiving that the church had not its full right, filed his bill, and brought his ejectment, as in the bill are set forth; and that he was willing to comply and submit if he might have his just dues (a).

The *Earl of Nottingham* replied; and witnesses were examined on both sides.

The Court, after hearing, adjourned the cause for further consideration.

The cause came on to be heard in *Easter Term* last; and on reading the agreement touching the said exchange, and the several depositions taken in the first cause, on both sides; and upon long debate of the matter; the Court did not then think fit to deliver their opinions; but adjourned the said causes.

The exchange and *inclosures* established,

although it doth not appear that the ordinary consented.

And now upon hearing several counsel, and upon long debate, it appearing to the Court (b), that the said exchange and *inclosure* were very ancient, and that great sums of money had been laid out in fencing, quick-setting, and inclosing the said manor; and that it would be very mischievous, and of dangerous consequence, to question such ancient exchanges, and throw open such ancient *inclosures*, after so long enjoyment on all sides, although it might not appear that the consent of the ordinary was at first had thereunto; and that for the said rectory and glebe, as now held and enjoyed, together with what is hereby decreed to the rector and his successors, will be of better value than it was before the *inclosure*; and the Court holding it just and reason-

(a) The book does not state the answers of the other defendants to the cross bill.

(b) WM. MONTAGU, Lord Chief Baron, ED. ATKYNS, WM. GREGORY, THOS. STREET,

able that there should be a settlement of the rights, both of the lord of the manor and the rector,

IT IS ORDERED AND DECREED BY THE COURT, that all the inclosures of and in the said manor and parish of *Milton*, otherwise *Middleton Keynes*, be, and hereby are, for ever settled and established, as now they are; and that the said *Earl of Nottingham*, his heirs and assigns, lords and owners of the said manor and premises, and his and their farmers and tenants for the time being, do, and shall for ever hereafter, peaceably and quietly hold and enjoy the said manor and lands so inclosed, and all the glebe lands which formerly lay promiscuously in the fields, and are now inclosed and lie in any the grounds or inclosures of or in *Milton* aforesaid, held or enjoyed by the said *Earl of Nottingham*, or his tenants, against the said *Dr. Atterbury* and his successors, rectors of the rectory of *Milton* for the time being, and freed and discharged of and from all his and their claims and demands for or concerning any of the said glebe lands

AND IT IS ALSO FURTHER ORDERED, &c. that the aforesaid customary yearly rates or payments of twenty shillings, three pounds, and six shillings and eightpence, for the lands aforesaid, called *Ten Pound Close*, *Great Pasture*, and *Lady Mead*, shall be, and are hereby settled and established; and that the said *Earl of Nottingham*, his heirs and assigns, lords and owners of the said closes and grounds, and the tenants and farmers thereof, shall ever hereafter respectively hold and enjoy the said closes and grounds (excluding those before excluded) freed and discharged of and from the payment of any manner of tithes for the same, save and except only the said yearly rates.

AND IT IS FURTHER ORDERED, that the said *Earl of Nottingham* do forthwith set out, convey, and assure, unto or to the use of, the said *Dr. Atterbury* and his successors, rectors of *Milton*, lands in the said manor of the yearly rent of fifteen pounds (and until such settlement that he do pay the said fifteen pounds yearly), and which lands, when so set out, are to be, and by this Court are declared and decreed to be, for and in lieu and full satisfaction and discharge of the barn, and the commons, and pasturage in the meadows, pasture lands, and fields of *Milton*, for four horses, ten beasts, and thirty sheep, and of all other commons and pasturage claimed or pretended to by the said *Dr. Atterbury's* bill, and in lieu and satisfaction of all the glebe lands of or belonging to the said rectory, which are intermixed with, or lie promiscuously in or amongst the lands or grounds of or belonging to the said *Earl of Nottingham* or his tenants, and of all claims and demands which he shall or may have or claim, for or upon the account of the said barn, commons, and glebe lands.

AND IT IS FURTHER ORDERED, that a commission do issue, under the seal of this court, for setting out the two acres called

Q 4

Buckingham

ATTERBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTERBURY.

The lords of the manor of *Milton* are, in future, peaceably to enjoy the same, as at present inclosed;

and the yearly payments for *Ten Pound Close*, *Great Pasture*, and *Lady Mead*, accepted, in lieu of tithes, by *Dr. Atterbury* and his successors.

The lord of the manor to set out lands worth 15l. a-year, in lieu of the rector's right of common for four horses, ten beasts, and thirty sheep,

and in lieu of all glebe lands intermixed with the lands of the manor.

A commission to issue to set out the lands.

ATTERBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTERBURY.

The present and
future rectors to
enjoy the same,
and the *Dove
House* and tithes
of *Little Ham*.

All arrears to be
paid to the pre-
sent rector; the
right of common
at 5l. a-year and
the dove-house
at 40s.

The original bill
dismissed, as to
the liberty of tak-
ing thirty loads
of hay; the cot-
tage; and *Saw-
pit Yard*.

A perpetual in-
junction issued
for establishing
the inclosures,
&c.

Buckingham Way, and also the lands of fifteen pounds a-year value, to be conveyed as aforesaid.

AND IT IS FURTHER ORDERED, that the said *Dr. Atterbury* and his successors, rectors there, shall, for ever hereafter, hold and enjoy the several lands and grounds heretofore inclosed and set out, and now held and enjoyed by him, for and as *the glebe* of the said rectory, or in lieu thereof; and shall also hold and enjoy the said dove-house, and the tithes in kind, or the close called *Little Ham*, and the said yearly customary payments in lieu of tithes, and for the said closes called *Ten Pound Close*, *Great Pasture*, and *Lady Mead*, as aforesaid.

AND IT IS FURTHER ORDERED, that the said *Earl of Nottingham* and *H. Stafford* do pay to *Dr. Atterbury* all such arrears of the tithes in kind of *Little Ham*, and of the said annual rents and customary payments aforesaid, and of the ancient commons claimed by his bill, after the rate of five pounds a-year and forty shillings a-year for *the Dove House*, as demanded by the bill.

But as to the thirty loads or jogs of hay, and the cottage alledged by his bill to be built on the freeboard of *the Homestall* of the parsonage yard, and the pretended parcel of glebe called *Chapel Close*, and the orchard taken out of the *Chapel Close* for the said cottage, and also the *Sawpit Yard*, and other the matters claimed by his bill, and for which there is no decree, there not appearing any right to the court for the same, the bill is to be dismissed without any costs.

AND IT IS FURTHER ORDERED, &c. that a *perpetual injunction* do issue for establishing the inclosures aforesaid, and for staying the action of ejectment brought by the said *Dr. Atterbury*, and all other actions and suits that may be hereafter brought by him or his successors for recovering any of the glebe lands of the rectory which lie intermixed with or amongst any other lands or inclosures of the said *Earl of Nottingham* and his tenants, or touching any other matter settled by this decree; and it is referred to the deputy remembrancer to take the said account, and to report the same to the court.

And the said defendant the *Earl of Nottingham* is to pay to the plaintiff *Dr. Atterbury* sixty pounds for his costs.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
THO. STREET.

18th May 1686.
Certificate of the
commissioners.

In pursuance of the said order, a *commission* issued forth, under the seal of this court, for setting out and ascertaining the said two acres called *Buckingham Way*, and the said lands of fifteen pounds

pounds a-year value, directed to several commissioners; in pursuance of which, six of the commissioners returned the said commission and certificate annexed, dated the second of *February*, in the second year of *James the Second*, certifying, that the lands set out for glebe by the *Earl of Nottingham*, called *Betts his Home*, and the three acres, one rood, and five poles, in *Thomas Rents his Home*, do amount to the value of fifteen pounds a-year.

ATTERBURY
against
TURNER;
AND LORD
NOTTINGHAM
against
ATTERBURY.

And also in pursuance to the said order, the deputy-remembrancer made his report touching the arrears of tithes.

And upon hearing counsel on both sides, and reading the said commissioners certificate, and also the deputy-remembrancer's report,

IT IS ORDERED BY THE COURT, that the said certificate do stand, and is hereby ratified and confirmed; and that the lands mentioned in the same be held and enjoyed by the said *Dr. Atterbury* and his successors, rectors of *Milton* aforesaid, for the time being, *for ever hereafter*, for and in lieu, and full satisfaction and discharge of the barn, and the commons, and the pasturage in the meadows, pasture lands, and fields of *Milton* aforesaid, for four horses, ten beasts, and thirty sheep, and of all other commons and pasturage claimed or pretended to by the said *Dr. Atterbury's* bill, and in lieu and satisfaction of all the glebe lands of or belonging to the said rectory, which are intermixed with, or lie promiscuously in or amongst the lands or grounds of or belonging to the said *Earl of Nottingham*, or his tenants, in *Milton* aforesaid, and of all claims or demands which the said *Dr. Atterbury* or his successors, rectors of *Milton*, shall or may have or claim for or upon the account of the said barn, commons, or glebe lands, according to the purport and effect of the said decree.

Certificate confirmed.

AND IT IS FURTHER ORDERED, that the deputy remembrancer's certificate do stand, and hereby is ratified and confirmed; and that the said *Earl of Nottingham* do forthwith pay to the said *Dr. Atterbury* three hundred and fifty-one pounds and tenpence, mentioned in the said certificate to be due unto him.

The lord of the manor ordered to pay *Dr. Atterbury* 351*l.* 0*s.* 10*d.*

EDW. ATKYNS.
THO. JENNER.
R. HEATH.
CHR. MILTON.

MURTHWAITE

MICH. TERM,
36. CAR. 2.

MURTHWAITE *against* PEIRCE,

Yorkshire, 20th November 1684.

THE tenants of the manor of *Hutton Bonville*, in the county of *York*, are to pay to the rector of *Berkeby*, in the said county, 20s. a-year on *Saint Mark's Day*, or a gelding's gate, or a mare's gate, from *May Day* to *Michaelmas Day*, at the election of the rector, and 40s. upon *Saint Matthew's Day* yearly, in lieu of all tithes any way due within the manor of *Hutton Bonville*.

THE rector of the parish of *Berkeby*, in the county of *York*, claimed, by his bill, all and all manner of tithes arising, &c. within the said parish.

The defendants were landholders within the manor of *Hutton Bonville*, within the precincts of the said parish of *Berkeby*, and of which manor the defendant *Peirce* was lord; and they stated a customary manner of paying tithes.

A trial at law was directed upon this issue, "Whether there hath, for the time whereof the memory of man is not to the contrary, been usually and customarily paid or allowed yearly and every year, by the lord of the manor of *Hutton Bonville* aforesaid for the time being, to the rector of the said rectory and parish of *Berkeby* for the time being, the sum of twenty shillings, upon or about *Saint Mark's Day* yearly, or a gelding's gate or a mare's gate from *May Day* in the morning till the feast day of *Saint Michael the Archangel*, at the election and choice of the rector of *Berkeby* aforesaid; and also the sum of forty shillings a-year payable upon or about every *Saint Matthew's Day*, or upon or about every feast-day of *Saint Michael the Archangel* yearly, in lieu and full discharge of all manner of tithes, rights, payments, and duties, happening within the said township of *Hutton Bonville*, which were any way due or payable to the rector of *Berkeby* aforesaid, for the time being? and, whether the same hath been so taken and accepted by all the rectors and farmers of the said rectory?"

A trial was had upon the said issue, and a verdict passed for the defendants.

And upon debate of the matter, THE COURT was fully satisfied that there was such *prescription* and *modus*, time out of mind, used as aforesaid; and therefore, on the twenty-fifth of *May* 1685, ordered, that the said defendants be, and are hereby dismissed of and from the said several matters in the said bill contained.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
R. T. WRIGHT.

WATTS *against* Hoskyns.MICH. TERM,
36. CAR. 2.*Herefordshire, 20th November 1684.*

THE bill stated, that the plaintiff, as rector of the rectory or parsonage of *Doore*, in the county of *Hereford*, ought to have and receive all tithes, both great and small, arising in the said parish; that the defendant is owner of a grange therein, called *Kingston's Grange*; and that he had growing thereon corn, grain, hay, and other titheable matters.

The tithes of certain lands, called *Kingston Grange*, in the parish of *Doore*, in the county of *Hereford*, are not exempted from the payment of tithes in kind.

The defendant, among other matters, stated, that his estate in the said parish was parcel of the abbey of *Doore*, to which the rectory was appropriated, and so continued till the dissolution of the same in the reign of KING HENRY THE EIGHTH, after whose decease the same came to EDWARD THE SIXTH, who, by his letters patent, dated the fifteenth of *June*, in the seventh year of his reign, granted to Sir *F. Russell* and others, and their heirs, "all that grange of *Kingston*, with the appurtenances, to the late priory of *Doore* heretofore belonging, and all other the hereditaments whatsoever late in the tenure of *J. Baskerville* or his assigns in *Doore* or *Kingston*, to the said priory of *Doore* belonging;" that his lands were parcel of *Doore*; and that no tithes were ever paid for the same; and that the priory of *Doore* was of the *Cistercian order*, and thereby ought to be, and was discharged from the payment of tithes.

THE COURT, on reading a lease made by the abbot of *Doore* to *T. Baskerville* of the said grange, and the grant made by EDWARD THE SIXTH to Lord *Russell* and *J. Bridges*, was of opinion, that the tithes of the said grange do not pass either by the lease or by the general words in the grant; but that they ought to be paid in kind.

WM. MONTAGU.
EDW. ATKINS.
WM. GREGORY.
ROB. WRIGHT.

COTTERELL *against* Athrop and Others.MICH. TERM,
36. CAR. 2.*Gloucestershire, 20th November 1684.*

THE bill stated, that the defendant *Sprigg*, clerk, being seised of several closes of pasture, called *Middle Norton*, lying in the parish of *Weston Subedge*, in the county of *Gloucester*, by indenture, dated the twentieth of *October*, in the twenty-ninth year of his present majesty, demised the same to the plaintiff, to hold for twelve years, at two hundred and sixty pounds a-year, *tithe* the rector, stating, that there is a *modus* of 60*l.* a year for *Upper, Middle, and Lower Norton*; and that *Middle Norton* ought to pay only 12*l.* 3*s.* 6*d.* thereof in lieu of tithes.

The lessee for years of a farm called *Middle Norton*, in the parish of *Weston Subedge*, in *Gloucestershire*, files his bill against

free;

COTTERELL
against
ATHROP
AND OTHERS.

free ; that in lieu of tithes for the said farm there was a composition or rate tithe of twelve pounds, three shillings, and sixpence, payable half-yearly to the rector of *Weston Subedge*, being the proportion for that farm ; the farm, called *Upper Norton* and *Lower Norton*, lying within the said parish, paying the remainder, to make up the *modus* or ancient composition of sixty pounds a-year ; that the other defendant *Athrop*, clerk, being rector of the said parish, and well knowing the customs to be as aforesaid, for several years had received the ancient *modus* of sixty pounds a-year for the said three *Nortons*, and still did receive the same from *Lower Norton* ; the proportion being thirty-one pounds, seventeen shillings, and sixpence, and for *Upper Norton* fifteen pounds, nineteen shillings ; yet to reap advantage, he did endeavour to set aside the said ancient composition, and threatens to sue for tithes *in kind*. The plaintiff therefore prayed, that the defendant *Athrop* might answer the premises ; that the ancient composition of sixty pounds a-year might be established by the decree of this court ; that the plaintiff might examine his witnesses for the preservation of their testimonies ; and that an injunction might be awarded to stay the defendant *Athrop* from proceeding at law for treble damages.

The defendant denies the existence of the *modus*, and states, that the greatness of the sum is evidence that it could not have been an ancient agreement.

The defendant *Athrop* answered, and believed the plaintiff had been tenant and occupier of *Middle Norton*, as in the bill is mentioned ; but what title the defendant *Sprigg* had made to him concerning the same he knew not, nor of any *modus* or customary payment of sixty pounds a-year for the tithes of the *three Nortons*, or of the twelve pounds, three shillings, and sixpence, for or as a proportionable rate for *Middle Norton* ; that the said *three Nortons* lie in the parish of *Weston Subedge*, of which he hath been rector for sixty years past, being presented by *Lord Say and Sele*, who was the owner thereof ; that he knew not of any *modus decimandi*, or customary rate of sixty pounds a-year, or any other sum in lieu of tithes in kind payable for the *three Nortons* when plowed or sowed, or at any other time ; or that any such rate was anciently received by the rectors there ; and denied that there hath been, time out of mind, twelve pounds, three shillings, and sixpence, or any other sum paid, either as parcel of the said sixty pounds a-year, or otherwise, as a *modus* for the tithes of *Middle Norton* ; and if any such payment of sixty pounds a-year hath been paid, he believed the same was by some temporary composition or agreement between the rectors and the owners of the said *three Nortons* ; and that the greatness of the pretended *modus* is an evidence against itself ; for that the tithes in the time of KING RICHARD THE FIRST would not be worth half so much ; and therefore the said sixty pounds a-year could not be a perpetual *modus*.

THE

THE COURT declared, that so large a *modus* or composition of sixty pounds a-year could not be anciently, or time out of mind, the full yearly value of the said *three Nortons*, when the same were improved by a long inclosure thereof, and immediately before the late ploughing thereof not exceeding three hundred pounds a-year, the tithes included. And upon producing divers ancient deeds and leases it appeared, that *M. Hinmer*, the rector of *Weston Subedge*, on the eleventh of *December*, in the tenth year of *QUEEN ELIZABETH*, demised the whole rectory to one *W. Hodges* for eighty years, at the rent of thirty-one pounds a-year; and that the assignees of the said *W. Hodges*, by indenture, dated the fourteenth of *July*, in the first year of *KING JAMES*, demised the tithes of the said *three Nortons* (except *the Grove* there) to *Sir Richard Fines*, the then owner of the same, in consideration of one hundred pounds fine, and at the rent of sixty pounds a-year; which term was afterwards, by another indenture of the tenth of *February*, in the sixth year of *KING JAMES*, in consideration of fifty-six pounds, thirteen shillings, and fourpence, enlarged to continue to the end of *Hinmer's* lease at the like rent of sixty pounds a-year; which the Court conceived to be the first rise or ground of the said pretended *modus*; and that the same was but a temporary composition; WHEREFORE, upon full debate of the matters,

COTTERELL
against
ATHROP
AND OTHERS.

And it appearing that the *three Nortons*, in their highest state of improvement, only let for 300l. a-year;

and that in the reign of *James the First* the tithes of the *three Nortons* were let for 60l. a year, from whence the idea of the *modus* might originate.

THE COURT declared, that they saw no reason to relieve the plaintiff upon his said bill; the said pretended *modus* being in no ways binding upon the defendant; and thereupon ordered, that the defendant *Athrop* shall be, and is hereby dismissed this court, with costs.

The Court determined the said pretended *modus* invalid.

WM. MONTAGU.
EDW. ATKYNS.
WM. GREGORY.
ROB. WRIGHT.

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
DURING
THE REIGN OF JAMES THE SECOND.

TRIN. TERM,
2. JAC. 2.

ROBERTS *against* KNOWLER and WATERMAN.

Kent, 9th July 1686.

The common marsh lands in the parish of *Sea Salter*, in the county of *Kent*, pay a *modus* of *sixpence* an acre, in lieu of the tithes of the herbage of the said marsh.

THE plaintiff, as lessee of the vicarage of *Sea Salter*, in the county of *Kent*, demanded twelvepence an acre for pasture and the depasturing of cattle, in lieu of tithe herbage.

The defendant said it was only sixpence an acre.

A trial was directed on this issue, "Whether there is a *modus* of sixpence an acre in lieu of tithes for the common marsh lands held by the defendants, late *Doctor Mills* land, within the said parish?"

The plaintiff commenced his action, and the defendants pleaded, and the plaintiff brought down his record to be tried, but did not proceed to trial; and thereupon, on the twenty-ninth of *November* last, the said issue was again directed to be tried upon paying the costs; but at the assizes he again diswarned the said trial.

THE COURT ordered, that the said bill be, and the same is hereby dismissed (*a*).

(*a*) No costs mentioned.

TURNOR

TURNOR *against* PAYNE and Another.MICH. TERM,
1. JAC. 2.*Kent, 19th November 1686.*

THE bill stated, that the defendants then were, and for the space of ten years last past had been, owners, occupiers, or proprietors of several farms and lands in the parish of *St. John's*, in the *Isle of Thanet*, in the county of *Kent*; that the tithes of wheat, barley, oats, rye, pease, beans, and other grain, belonged to the parsonage impropriate of *Salmerton*, and that the tithe of hay, of the herbage of land, of orchards, gardens, wool, calves, lambs, and other *small tithes*, belonged to the vicar of the said parish of *Saint John's*; that the plaintiff for several years past had been farmer of the rectory of *Salmerton*, and was also entitled to the vicarical tithes aforesaid; that the defendants refused to discover their farms, and to shew their corn as the custom was, and had hindered him taking the tithes thereof.

In the parish of *Saint John's*, in the *Isle of Thanet*, tithes for the herbage of arable lands are by custom due to the vicar for the same year in which the said lands have been sowed with corn.

The defendant *Wm. Payne* said, that he had been occupier of a farm in *Saint John's* called *Twenties*, and admitted that both the great and the small tithes of that farm belonged to the plaintiff, but denied that there were any tithes due for the herbage of any arable lands.

The defendant *Elizabeth Payne* said, that she was occupier of a farm called *Shonken Dean*, in *Saint John's*, and also of a messuage and farm there, and that the corn tithes of each farm belonged to the plaintiff, but denied that any tithe of herbage was due for any arable lands.

Upon reading the proofs, and upon debate of the matters as to the tithes demanded by the plaintiff of the herbage of arable grounds in the same year after the corn is carried off, and while the same remain fallow ground, for which the defendants by their answers deny any tithe to be due, the Court directed a trial to be had upon this issue, viz. "Whether by custom, time out of mind used, tithe herbage of arable lands, within the said parish of *Saint John the Baptist*, were due to the impropriator of *Salmerton*, or the vicar of *Saint John the Baptist*, for the same year in which it hath been sown with corn?"

A trial was accordingly had; wherein a verdict was given, "that, time out of mind, tithes, or a composition or payment for and in the name or lieu of tithes, had been paid for the herbage of arable lands, within the said parish of *Saint John the Baptist*, to the proprietor of *Salmerton*, or vicar of *Saint John the Baptist*, for the same year in which the said lands had been sown with corn."

This

TURNER
against
PAYNE
AND ANOTHER

This cause came on to be heard the twenty-first of *April* 1687, both in relation to the plaintiff's demand of tithe herbage, as also for his other demands in the bill for tithes due from the defendants; and,

Upon reading the said decree, and the return of the *poslea* upon the said trial,

IT IS ORDERED AND DECREED BY THE COURT, that the defendants shall account for, satisfy, and pay to the plaintiff the tithe of herbage, and all other tithes and titheable matters due from them respectively to the plaintiff to the time of exhibiting his bill; and it is hereby referred to the deputy remembrancer to take the said account (a).

(a) No costs mentioned.

MICH. TERM,
1. JAC. 2.

ROBINSON *against* FOULK and Others.

Cardiganshire, 4th December 1686.

In the parishes of *Llanbadarne Vawr, Castle Gwalter, and Llanychayarne*, in the county of *Cardigan*, the impropriator takes, by custom, the tithes of herrings as follows: from fishermen inhabitants the eleventh herring taken and landed within the rectory, and the twentieth herring so taken and landed out of the rectory; and from fishermen not inhabitants the twentieth herring taken and landed within the rectory.

THE bill stated, that for about eight years past, the plaintiff had been seised in his *demesne as of fee* and other estate of inheritance of and in the rectories of *Llanbadarne Vawr, Llanhangell Generglin*, otherwise *Castle Gwalter*, and *Llanychayarne*, in the county of *Cardigan*, and of the tithes within the said parishes (except such part or portion of tithes as do belong to the vicar of *Llanhangell*); that the said parishes lying on the sea coasts, and the inhabitants using the trade of herring fishing, the greatest profits of the said tithes did arise by the tithes of herrings; that the plaintiff, and all those whose estate he hath in the said rectory, have, time out of mind, received tithe herrings yearly in the manner following, TO WIT, from every person dwelling within the said rectories and parishes, and taking herrings at sea, or in any creek of the sea, *every eleventh herring* taken in the sea and loaded in any port, creek, or elsewhere, within any of the said rectories and parishes, or any of them; and every *twentieth herring* so by the said persons taken and put on shore in any foreign place out of the said rectories, parishes, and precincts thereof; and from every person not inhabiting the said rectory *every twentieth herring* taken at sea, or any creek thereof, and landed within any of the said rectories and parishes, or any of them; that ever since the plaintiff hath been seised of the premises, until lately, the fishing inhabitants, within the said rectories, and others not inhabitants, have paid tithe of herring according to the method aforesaid, and also constantly paid the same, time out of mind, to the respective owners and proprietors of the same; that the defendants, being inhabitants therein, have, for four years last past, taken great store of herrings, and have refused payment of the tithes according to the custom aforesaid, and encouraged

encouraged the foreign fishermen to refuse payment, and said, that by law no tithes ought to be paid for fish, nor ever were paid to the plaintiff or his predecessors according to the methods aforesaid, although they know the contrary. Therefore the bill prayed a discovery of the quantities, and that the defendants may be compelled to pay their tithe of herrings according to the said customs.

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AND OTHERS.

The defendants said, that they know not what right or title the plaintiff has to the rectory, for that the *Earl of Castlemaine* being owner thereof, he and his lady had disposed of the same for twenty years past, and they had not heard of any alienation. They confessed, that several of the inhabitants used the trade of herring fishing, and believed that all tithes within the said rectory, except the vicarical tithes, belonged to the impropriator; but they denied that the greater part of the tithes of the said parish arose from herrings, for that it arose from corn and such like articles, worth one thousand pounds *per annum*, and that the tithe of herrings was only worth sixteen pounds. They also denied the payment of the tithe of herrings time out of mind as stated in the bill. They confessed themselves inhabitants within the parish of *Llanbadarne Vawr*, and that they had for several years past used the trade of herring fishing, and gained a poor livelihood thereby; and that of late years such as were farmers of the tithes have claimed the tithe of herrings, and that they have given for the same, sometimes more and sometimes less, as they thought fit. They said, that they had landed several quantities of herrings within the sea marks, but kept no account of them; that until the year 1683 they had constantly paid and delivered to the proprietors such proportion of herrings or such sum of money as they thought fit; but that when they were informed that no tithe was due of right for fish taken at sea, they forbore to pay the same; that in regard to the tithes in the year 1683, the plaintiff had no right to them, for they were let to *Rees Lloyd* and another for sixteen pounds a-year, which they paid; that if in the year 1684 the proprietors could prove tithe paid as in the bill mentioned, they hoped they would not be compelled to pay the same, there being no such tithe due of *common right*; and said that the said parishes do not extend into the sea further than the full sea marks.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

Upon reading the several proofs taken on both sides, it appeared that there was such a *custom* within the said rectories for the payment of tithe herrings as is set forth in the bill.

IT IS THEREUPON ORDERED AND DECREED, that the defendants *D. E. Foulke, H. Evan, and R. and I. Lewis*, shall account with, satisfy, and pay to the plaintiff their tithes of herrings

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AND OTHERS.

herrings according to the said custom for the year 1683 and 1684, together with moderate costs.

But as the taking of the said account would be troublesome and expensive to the defendants, it is ordered by the court, by consent of all parties, that they shall pay to the said plaintiff a fixed sum of three pounds, one shilling, and eightpence, to be divided accordingly.

HILARY TERM
2. JAC. 2.

STOCKER against DELAPIERE.

Kent, 4th February 1686.

The site and
precinct of the
Black Friars, in
the city of Can-
terbury, are
tithe free.

THE bill stated, that the plaintiff, for twenty-three years past, had been rector of the parish of *Saint Alxhage*, in the city of *Canterbury*, and was entitled to all tithes, oblations, and obventions, arising within the said parish and the titheable places thereof, or to a composition of two shillings and sixpence, or two shillings, in lieu thereof, according to the rents and profits of the houses in the parish; that the defendant, for fourteen years, had been occupier of a messuage, garden, and orchard in the said parish, being grounds added to a spot of ground where the *Black Friars* of *Canterbury* were at first seated, called the *Island*; which said island, within the time of memory, was within the said parish; that the defendant, as executor to his father, ought also to satisfy the plaintiff for ten years tithes due from him after the aforesaid rate; but that the defendant refused to pay the plaintiff his dues, pretending that the said island is not within the said parish, or that the said *Black Friars* were dissolved in the thirty-first year of *Henry the Eighth*, and were upon the dissolution discharged from the payment of tithes and oblations.

The defendant said, that he knew not that the messuage, &c. which he occupied, or any part thereof, was in the said parish, or any of the titheable places thereof, for that the same was situated in the site and precinct of the *Black Friars*, in *Canterbury*, which had always (till the time of the late usurped powers) been a privileged place, and reputed to be out of the said parish, and a distinct parish of itself, having a distinct church and churchyard within the said precinct. He confessed that he and his father had enjoyed the said premises about the time in the bill alledged, and that he was executor to his father; that the premises are now in his occupation, and, from time to time out of the memory of man, have been free and exempted from the payment of any tithes or other oblations (except sacramental duties only, which by a decree of the ecclesiastical court of *Canterbury*, made in the year 1572, were charged thereupon to be paid to the said parish of *Saint Alxhage*); that from time whereof the memory of man is not to the contrary, the said premises were part

STOCKER
against
DELAPIERE.

part of the possessions of the archbishop of *Canterbury*, free from the payment of tithes, and that afterwards the same (amongst others) came to the preaching brothers, called *the Black Friars*, who also held the same free from the payment of tithes till their dissolution; that upon the dissolution of the said priory, as well by the surrender of the said preaching brothers, as by an act of parliament, in the twenty-seventh year of *Henry the Eighth*, the said messuage, lands, and premises, came to the said king, who was seised thereof in fee in right of his crown, and held and enjoyed the same free and discharged of all tithes, oblations, and obventions, for or in respect thereof; and that after his death king **EDWARD THE SIXTH** was seised thereof, so freed and discharged; that, after his death, it descended and came to **QUEEN MARY**, who also held and enjoyed the same freed and discharged from the payment of tithes; that after her death **QUEEN ELIZABETH** was seised in like manner; and being so seised, by her letters patent, dated the fifteenth of *July*, in the second year of her reign, did grant and convey the same to *J. Harrington* and *G. Burdon*, and their heirs; that the said messuage, orchard, and premises, did, by mesne conveyances, or in law, come to the defendant's father, who by will devised the same to the defendant, and his heirs and assigns for ever; that about one hundred and twenty years since, soon after the said precinct was conveyed out of **THE CROWN**, when the privileges of the said priory and their exemption from parochial jurisdiction and payment of tithes were fresh in memory, and the proofs of exemption produceable, one *Ovendon*, then owner of the said precinct, was cited to appear in the ecclesiastical court to answer in a plea of subtraction of tithes; to which he pleaded "exemption from paying of tithes;" which plea the then judge allowed, and dismissed *Ovendon*, only enjoining him to perform his sacramentals in the parish church of *Saint Alxbage*. He denied that any of the inhabitants of the said scite or precinct ever paid any tithes, oblations, or obventions, to the rector of the said parish until of late that the plaintiff had procured some of them to pay something in lieu of tithes; that he knew not of any such composition as in the bill is charged, nor ever heard that after the said suit brought against *Ovendon* (till this) any rector or minister of the said parish did ever demand or sue for tithes, or for any thing in lieu thereof, for any houses, lands, or tenements, within the said precinct of the *Black Friars*, but that the same were always freed and discharged from all such payment of tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

Upon reading letters patent under the great seal of *England* dated the fifteenth of *July*, in the second year of *Queen Elizabeth*, it thereby appeared, that the scite of the said *Black Friars*

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against
DELAPIERE.

Friars had been part of the possessions of the archbishop of *Canterbury*, and by the said letters patent granted as such to *John Harrington* and *G. Burdon*: also on reading an exemplification of a dismissory sentence made in the consistory court of *Canterbury*, in the year 1572, concerning one *William Ovendon*, then owner of the said house called *the Black Friars*, whereby it appeared that the said house was privileged from the payment of tithes: also on reading the depositions taken in the cause, and on long debate,

THE COURT was of opinion, that the said messuage and premises, in the possession of the defendant, parcel of the scite of the said priory, and for which the plaintiff by his bill seeks relief for tithes, or a customary payment in the name or lieu of tithes, are not liable to the payment of any tithes, or any composition, customary rate, or payment for or in the name or lieu of tithes to the rector of the said parish of *Saint Alxhage*. It is thereupon ordered by the Court, that the said bill be dismissed without costs.

WM. MONTAGU.
EDW. ATKYNS.
EDW. NEVILL.

HILARY TERM
2. JAC. 2.

BAINES against CLARKE and HARDY.

Yorkshire, 13th February 1686.

The plaintiff, as lessee of the rectory of *Kilborne*, in *Yorkshire*, demands tithes of *Torpe* in the *Willows*

of the defendant, as executor to his father, *Henry Clarke*.

THE bill stated, that *Richard*, late *Archbishop of York*, being seised of the rectory of *Kilborne*, in the county of *York*, by indenture dated the thirtieth of *October*, in the twenty-second year of CHARLES THE SECOND, did demise the same, together with all manner of tithes, both great and small, and all sums of money due or any way payable in lieu and for or in the name of tithes arising yearly within the said rectory and the titheable places thereof, to the plaintiff, his heirs, and assigns, for a term of years; that by virtue thereof the plaintiff entered and became entitled to the same; that the defendant, *Clarke's* father, was for four years before his death an inhabitant and owner or occupier of several messuages and lands, and that tithes of the same were due to the plaintiff, but that before any satisfaction was made, he died and left the defendant his executor, who possessed himself of his personal estate; that the defendant *Clarke* in his own right, and the defendant *Hardy* for several years, had been inhabitants and occupiers of several messuages and lands, and had yearly corn and hay and other tithes within the said rectory, which were due to the plaintiff; that the defendant *Hardy* did also owe to the plaintiff for his oblations, obventions, *Easter* reckonings, and other duties.

The

The defendants stated, that since the thirtieth year of *Charles the Second*, *William Kitchingman* hath been tenant for three lives of the farm or lordship of *Thorpe in the Willows*, which they supposed were the lands for which the plaintiff demanded tithes; that for four years after the death of the said *Henry Clarke*, they farmed most of the said lordship of him; that till of late no tithes in kind were ever demanded; for that the premises were discharged therefrom by a *modus* of seven pounds a-year; that for the first four years in the bill mentioned *Henry Clarke*, deceased, was occupier of the principal messuage and other lands, parcel of those for which tithes are demanded; that the plaintiff brought an action of debt upon the statute 2. and 3. *Edw. 6. c. 13.* for tithes of corn and hay against the defendant *Clarke* as executor; that upon the trial thereof a verdict passed for the defendant *Clarke* for the said *modus* of seven pounds a-year; that the same was tendered to the plaintiff in full of all tithes, but that he refused to accept the same. He confessed, that *Henry Clarke* died possessed of a personal estate sufficient to pay his debts. The defendant also stated, that as for the tithes of the premises after the said four years, the plaintiff had brought two actions of debt against him, and recovered treble damages for the same, and that the plaintiff accepted of the same in full of all manner of tithes. And as for their other tithes, oblations, obventions, *Easter* offerings, and other duties, the defendants said that the value of the same had been duly tendered, but that the plaintiff had refused to accept thereof, and that the defendants are willing to pay all just demands.

BAINES
against
CLARKE AND
HARDY
The defendants
state a *modus* of
7l. a-year;

that the plaintiff
brought two
actions, and a
verdict was gi-
ven for the de-
fendant.

Plaintiff brought
action against
the defendant,
and recovered
treble damages.

The plaintiff replied; the defendants rejoined; and witnesses were examined.

Upon the proofs being read, and debate thereon,

THE COURT declared, that the plaintiff ought to accept of the *modus* of seven pounds a-year in satisfaction of all the tithes of corn and hay, and all other tithes, both great and small, for those four years, he being by verdict concluded and stopt from demanding any more for the tithe of corn and hay, and all other tithes during those four years; and that the plaintiff ought not to have any further satisfaction than he hath already received for the tithes of corn and hay, for which the said two other actions were brought; but as for the tithes and duties of the defendant *R. Clarke* in the last four years, for which no action was brought, and which were detained from the plaintiff, THE COURT declared that the plaintiff ought to have satisfaction for the same.

The Court of o-
pinion that the
plaintiff is con-
cluded by the
verdicts.

It is thereupon ordered and decreed, that the defendant *Clarke* do forthwith pay and satisfy to the said plaintiff the sum of twenty-eight pounds for all the tithes of corn and hay and all other tithes both great and small, for the first four years,

BAINES
against
CLARKE AND
HARDY.

demand by the bill as executor to his father, and that the defendant *Clarke* do account for and pay to the plaintiff the value of all his tithes (except tithes of corn and hay) arising within the said rectory for the four last years in the said bill mentioned.

AND IT IS ALSO ORDERED, that the defendant *Hardy* do account for and satisfy to the plaintiff the value of all his tithes, both great and small, whatsoever, arising or falling within the said rectory, due to the plaintiff for all the time he was tenant and occupier of any lands within the said rectory.

EDW. ATKYNS.
THOS. JENNER.
RICHD. HEATH.
CHR. MILTON.

HILARY TERM
2. JAC. 2.

WARDELL and Others against SQUIRE and Others.

Yorkshire, 11th February 1686.

The owner of the tithes of the township of *Greenhamerton*, in the county of *York*, is entitled to the tithes of corn, grain, meadow, and pasture ground in kind.

THE bill stated, that *C. Tanckred*, of *Whixley*, is seised of the inheritance of the tithes of corn, of arable land, of meadow, and pasture of *Greenhamerton*, in the county of *York*, and of the small tithes of the said township; that by indenture, dated the eighth of *November*, in the thirty-fifth year of CHARLES THE SECOND, he let to the plaintiffs the great and small tithes within the said township, to hold for twelve years, at forty-two pounds a-year; and that by the said indenture the said plaintiffs became entitled to all the said tithes.

The defendants said, they believed that *C. Tanckred* is seised in fee of the tithes of corn, but not of meadow or pasture, within the said township; and that a *modus decimandi* of a halfpenny a year for an *ox gang* hath been customarily paid in full satisfaction of all the tithes of hay, herbage, and agistment; that the said *C. Tanckred* was not seised of all small tithes, but that the vicar of *Wixley* hath right to some part of them, and that they had paid the same to him, and tendered the other tithes, according to the custom, to the plaintiff.

A trial at law was directed upon this issue, viz. "Whether there be a custom within the township of *Greenhamerton*, time whereof the memory of man is not to the contrary, that a halfpenny an *ox gang per annum* ought to be paid in full satisfaction for all the tithes of hay, herbage, and agistment of all the meadow and pasture grounds within the said township, or not?" The other matters in the cause to be reserved till the said trial shall be had.

A trial was accordingly had; and upon full evidence given on both sides, a verdict was given for the plaintiff, that there was no such *modus*.

THE

THE COURT therefore decreed, that the defendants do pay to the plaintiff the values of their respective tithes of all corn and grain, meadow and pasture ground, together with all their small tithes happening and arising upon the premises in question for the time demanded by the bill.

WARDELL
AND OTHERS
against
SQUIRE
AND OTHERS.

TOWNSON, D. D. *against* HUNGERFORD, Knt.

EASTER TERM
2. JAC. 2.

Wiltshire, 6th May 1687.

THE vicar of *Bremhill*, in the county of *Wilts*, demanded tithes in kind for the lands which the defendant held within the manor of *Cadenham*, in the said parish.

The defendant pleaded *a modus* of twenty shillings a-year in lieu of all manner of tithes within the said manor and the demesne lands thereto belonging.

On the third of *February* last it was ordered, that the defendant should take out a commission, and appear gratis; and by another order, made the first instant, the depositions, taken in the court of chancery, were to be made use of at the hearing.

On reading the depositions and ancient acquittances for the said *modus* of twenty shillings a-year payable in lieu of all tithes for the said manor of *Cadenham*,

THE COURT declared, the defendant to have well proved his *modus*, and ordered that the said bill be dismissed without costs, upon the defendant paying to the plaintiff the arrears of the *modus* of twenty shillings a-year.

ATKINS, *Chief Baron.*
JENNER, *Baron.*
HEATH, *Baron.*
MILTON, *Baron.*

The lands in the manor of *Cadenham*, in the parish of *Bremhill*, in the county of *Wilts*, pay a *modus* of twenty shillings a-year to the vicar of the said parish in lieu of all tithes arising within the said manor.

WOODFORD *against* HERNE.

Northamptonshire, 7th June 1687.

TRIN. TERM,
2. JAC. 2.

THE vicar of the parish of *Duston*, in the county of *Northampton*, claimed from the defendant the small tithes of the site of the late dissolved abbey of *Saint James*, and the inclosed lands thereto belonging, lying within the said parish.

The defendant set forth a *modus* of forty shillings a year payable to the vicar of *Duston*, in lieu of all tithes arising from the said site.

Upon reading the depositions, it plainly appearing, that the forty shillings a-year mentioned in the answer is payable for tithes arising from the said site and the inclosed lands thereunto belonging,

There is a *modus* of 40s. a-year payable to the vicar of *Duston*, in *Northamptonshire*, for the small tithes arising on the site of the abbey of *Saint James*, and the inclosed lands thereunto belonging,

WOODFORD
against
HERNE.

IT IS ORDERED AND DECREED BY THE COURT, that the defendant do pay to the plaintiff the arrears of the said *modus* forty shillings a-year, being for five years due at *Michaelmas*, before filing the bill, with costs.

EDW. ATKYNS.
THOS. JENNER.
RICHD. HEATH.
CHR. MILTON.

MICH. TERM,
2. JAC 2.

LORD OSSOULSTON *against* WIDDRINGTON, D. D.

Norfolk, 28th October 1687.

The rector or vicar of *Terrington*, in the county of *Norfolk*, and *Margaret Professor*, in the university of *Cambridge*, is liable to pay to the grantee of the crown an annuity of 7l. 10s. 2d.

THE bill stated, that king CHARLES THE SECOND, in the twenty-second year of his reign, and long before, being seised in the annual rent of two pounds, three shillings, and fourpence, payable for tithes of grain and hay issuing out of the rectory of *Terrington*, in the county of *Norfolk*, and of another annual rent of five pounds, six shillings, and eightpence, issuing out of and for the chapel of *Saint James*, in *Terrington*, and for the farm of that chapel, or *Saint John's*, in *Terrington*, lately paid or payable by the vicar there for the time being at *Michaelmas* and *Lady Day*, by equal portions, and have been and are, or ought to have been paid by the vicar of *Terrington*, or by such as have been the *Lady Margaret's Professor* in *Cambridge*, or had or have a right to the premises whereout either of the said rents have or ought to be paid; that his majesty, being so seised, the said rents, with other rents payable to his majesty for any tithes or lands in *Terrington*, and which have been or ought to be paid by the rector or vicar there, or the said *Margaret Professor*, or any other, were vested, by virtue of several acts of parliament, or letters patent, in *Lord Hawley* and others, and their heirs, in trust, for his said majesty, until sale made, and the said trustees were impowered to sell the same; that the trustees, by deed dated the thirtieth of *July* 1673, for the consideration therein mentioned, granted and conveyed to the plaintiff and his heirs, amongst other things, the said annual rents, whereby he is entitled thereto; that the defendant is, and ever since his, the plaintiff's, conveyance was, rector or vicar of *Terrington* and *Margaret Professor* of *Cambridge*, and ought to have paid to him the said rents ever since, and that his predecessors, the former rectors, for several years before, and since the year 1660, had paid both the said rents; that the defendant hath enjoyed the tithes of the grain and hay issuing out of the said rectory and chapels; that he had paid the rent of two pounds, three shillings, and fourpence, but refused to pay the rent of five pounds, six shillings, and eightpence; that the plaintiff, having paid a full consideration for the said rents, ought to enjoy the same. The bill

LORD
OSSOULSTON
against
WIDDRING-
TON, D. D.

bill therefore prayed, that the defendant might answer the said bill, and pay to the plaintiff the said rents and the arrears thereof ever since he became rector or vicar, or *Margaret Professor* as aforesaid.

The defendant said, that he knew not that his majesty king CHARLES THE SECOND was seised of the said rents, or that the same are payable by the vicar, or that the plaintiff derived his title from his majesty; that he hoped to prove that his late majesty, being seised of the said rectory, did, for the endowment of the *Lady Margaret's Professor*, by letters patent, dated the twenty-sixth of *August*, in the third year of his reign, grant to the said university the said rectory for ever, to hold in perpetual alms for all services, rents, and demands whatsoever. He confessed that he had been for twelve years past *Margaret Professor*; and entitled to the tithes and profits of the same; he denied that he was ever vicar of *Terrington*; and said that he is informed that there is a vicar endowed of the church of *Terrington*, and the said rectory and vicarage are, and they, for many years past, have been two different interests, not vested in one and the same person; that one *Mr. Henson* is vicar there; but whether the said vicar be chargeable with the said rents he knew not; that he believed there was a *free chapel* within the limits of *Terrington*, called *Saint James's chapel*, not depending on the rectory, having a distinct patron from the said church, with a distinct minister; that he knew not of any lands which belonged to the chapel of *Saint James*, and had heard that, if any such were, the same were long since swallowed up. He denied that he ever had in his possession any lands that belonged to the rectory other than the scite and the church-yard, and said, that there is a *chapel of ease* called *Saint John's*, where the vicar of *Terrington* hath the cure, and an house to dwell in, and some glebe; but whether chargeable with any rent to the crown or the plaintiff he knew not; that he knew not what rent any of his predecessors had paid for the said rectory or vicarage, or for the chapel of *Saint James*, or for the farm of the chapel of *Saint James* or *Saint John's*; but if any such were paid, he is advised that the said payment will not charge him or affect the church. He confessed that he had paid the rent of two pounds, three shillings, and fourpence, but it was before he was informed of the king's title to demand the same, and denied that he had held or claimed any thing as rector or *Margaret Professor* that is liable to either of the said rents.

The plaintiff replied, and shewed, that the two yearly rents have heretofore been known and answered to the crown, and to such as claimed under the crown, as two distinct rents, by the names and descriptions in the bill mentioned, or as one entire rent of seven pounds, ten shillings, charge-

LORD
OSBOULSTON
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TON, D. D.

chargeable upon, or issuing out of, or paid or payable for or in respect of the chapel of *Saint James*, in *Terrington*,; that by virtue of the said conveyance to him made, he is well entitled to the same; and that the defendant ought to pay him the same as one entire rent.

The defendant rejoined; and witnesses were examined.

On reading the depositions of the witnesses taken in the cause, and several ancient records and receivers' accounts, and the letters patent mentioned in the answer,

THE COURT was satisfied that the said rent of seven pounds ten shillings, and the arrears thereof, ought to be paid and answered by the defendant to the plaintiff, and that the defendant hath all along received the tithes and other things for and in respect whereof the said rents of seven pounds, ten shillings, a-year is or are due and payable.

And therefore it was ORDERED, ADJUDGED, AND DECREED by the Court, that the defendant shall account for and pay to the plaintiff the arrears of the seven pounds, ten shillings, unpaid, which have incurred since the defendant became possessed of the said rectory and tithes of *Terrington*; and also for the future shall pay to the plaintiff, his heirs, and assigns, the said rent of seven pounds, ten shillings, so long as the said defendant shall be possessed of or interested in the said rectory of *Terrington*, by two equal portions, at *Michaelmas* and *Lady Day* yearly.

EDW. ATKYNS.
THO. JENNER.
RICHD. HEATH.
CHR. MILTON.

MICH. TERM,
2. JAC. 2.

WARNER against CLOUGH,

Norfolk, 7th December 1687.

Lands formerly
belonging to the
priory of *Little
Walsingham*, in
Norfolk, are tithe
free.

THE scope of the plaintiff's bill was to compel the defendant to pay tithes for several lands in the said bill mentioned that were his in possession at *Little Walsingham* and *Great Walsingham*, in the county of *Norfolk*.

The defendant answered, and insisted, that the lands out of which the plaintiff sued for tithes are tithe free, having belonged to the priory of *Little Walsingham*.

Upon reading several depositions on the defendant's part, and a verdict at law for the plaintiff, and an ancient terrier or rental made in the twenty-first year of *Edward the Fourth*, and a copy of a record of a grant made in the ninth year of *Edward the First*, and another copy of the record of a surrender dated the fourth of *August*, in the thirtieth year of *Henry the Eighth*, and other field

field books and copies of records, and upon debate of the matter, the Court directed a trial at law, on the statute 2. & 3. *Edw.* 6. c. 13. on which trial the plaintiff became non-suited; but a new trial was granted upon payment of taxed costs of the former trial, on which trial a verdict passed for the defendant; and on hearing counsel another trial was granted to be tried by a special jury, at which trial, on full evidence, the plaintiff became again non-suited.

WARNER
against
CLOUGH.

7th Nov. 1688.

7th May 1688.

THE COURT therefore ordered the bill to be dismissed with costs to be taxed.

ATKYNs, *Chief Baron.*

HEATH, *Baron.*

INGLEBY, *Baron.*

ROTHERHAM, *Baron.*

CHITTY *against* REEVE.

Surry, 2d June 1687.

TRIN. TERM.

3. JAC. 2.

THE plaintiff, as executrix to her husband, who was farmer of the tithes within the rectory of *Farnham*, in *Surry*, under *Sir Thomas Vernon*, the impropriator of the said rectory, filed her bill to be relieved for tithes in kind of hops, stating a particular manner of taking the tithe of the same, according to a custom in the parish, viz. that the occupier should set out every tenth row or hill of hops, without any fraud, and as they arise, before the same are gathered, or the binds thereof cut.

The manner of paying the tithe of hops in the parish of *Farnham*, in the county of *Surry*, is that the occupier shall set out every tenth row or bill of hops, without any fraud, as the binds thereof cut.

they arise, before the same are gathered, or the

The defendant, by his answer, admitted the custom to be to set out every tenth hill, but alledged, that the custom also was for the occupier to cut the tithe hills, at the same time with his own, and to strip the binds and hops from off the poles and lay them upon such tenth hill, from whence the farmer was to remove them in a convenient time, and pick them elsewhere.

The plaintiff replied; and witnesses were examined.

Upon hearing counsel on both sides, and on reading several of the depositions taken in the cause, the Court decreed as follows. It fully appearing to the Court, that the custom, usage, or practice of paying tithe hops, in that parish, for above sixty years past, hath been, that the impropriator, or his lessee, hath had the tenth row when equal, or else the tenth hill; that the same have been left standing, with the hop-binds uncut; that the impropriator, or his lessee, or agents, have always had convenient time to come and cut the binds and pick the hops upon the grounds; and it further appearing, that if the owner of the hops should take down the poles and cut the binds of the tithe hops, when

S. C. Bunb. 29.

CRITTY
against
REKVR.

when he cuts his own, the tithe of hops would be much prejudiced and made worth little or nothing, it being the nature of hops to spoil if they lie twenty-four hours upon the ground, before they are picked, and it being impossible for the impropriator, or his lessee, or agents, to have persons to pick the tithe hops of the whole parish, who generally pick altogether, and have very great quantities growing, before they are spoiled, in case the owner should cut the binds of the tithe hops when he cuts the other nine parts. And the Court was of opinion and declared, the said custom, usage, and practice to be reasonable and fitting to be observed; and the Court also declared, that in case there was not any such usage, the tithe of hops ought to be paid in kind, viz. the tenth part of the whole after picking (a).

WHEREUPON IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the defendant shall account for and pay to the plaintiff the full value of the tithes, or tenth part of the hops, which he had growing within the said parish of *Farnham*, in and during the time in the bill set forth; and that it be referred to the deputy remembrancer to take the said account.

The deputy remembrancer, on the twenty-second of *June* 1688, made the following report, "In obedience to an order of the Court made the ninth of *June* 1687, I have examined the matters thereby to me referred, and find that the defendant was occupier and possessor of six acres and an half of land well planted with hops, for the year before the bill exhibited; and that he had more than two loads of hops growing thereon in the said year, every load consisting of twenty hundred weight, and every hundred weight was worth five pounds, and, allowing liberally for the picking and drying the tithe thereof, was well worth fifteen pounds; and I find by the proofs, that the plaintiff stript and carried away half a hundred weight of the said hops, which, according to the rate aforesaid, comes to twenty-five shillings, which being deducted out of the aforesaid fifteen pounds, the rest will remain due to the plaintiff."

And the said report was confirmed.

EDW. ATKYNS.
RICH. HEATH.
CHA. INGLEBY.
J. ROTHERHAM.

(a) See *Bate v Spracking*, Bunb. 20. *Gee v Perch*, 10. Vin. 3. Rayn. 87. 97. *Bliss v Chandler*, Burn. E. L. 450. Rayn. 152. 8. Vin. Abr. 585. *Walton v Tyers*, 5. Bro. P. C. 99 and the case of *Knights v. Halsey*, Hilary Term 37 Geo. 3. 7. Term. Rep. 56. by which two last cases

it appears to be decided, that the customary manner of tithing hops, as above-stated, cannot be supported; but that a tenth part of the hops, after it is severed from the binds, is to be paid to the owner of the tithes.

UMFREVILLE *against* HODGES and Others.*London and Middlesex, 26th January 1688.*

THE plaintiff, as executrix of the last will and testament of *W. Umfreville*, stated, that her husband, for twenty years and upwards before his death, was impropriator of the rectory impropriate of *Saint Botolph without Aldgate*, and entitled to all tithes, oblations, and *Easter* offerings within the said parish; that part of the parish lieth within the city of *London*, and the other part in the county of *Middlesex*; that the defendants were occupiers of several houses within the same during his life time, and ought to have paid their tithes, oblations, and *Easter* offerings to him; but that the same not being paid to him they became due to the plaintiff.

The defendants appeared and answered; the plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; upon reading the several depositions taken in the cause, and on full debate, a trial at law was directed, upon the following issue, *viz.* "whether any rate or sum, and what rate or sum of money, is payable in lieu of tithes for such house or houses of the defendants as lie in the parish of *Saint Botolph without Aldgate*, in the county of *Middlesex*?" To be tried before THE LORD CHIEF BARON, in *Middlesex*.

And as to the house of the defendant *Box*, the same being within the city of *London*, and his counsel insisting that the same is discharged from the payment of tithes, it is ordered by the Court, that all further proceedings against him shall be staid till the said trial be had, and, in the mean time, he is to give a note to the plaintiff's attorney of such grants and records and where they are to be found, as discharges his house from the payment of tithes, and to produce them at the trial.

A trial against the defendant *Thomas Heath* was accordingly had before THE LORD CHIEF BARON; and the jury found that there is a *modus* of eighteen shillings a-year for the tithes of his house to be paid by four shillings, and sixpence, a quarter.

The cause now came on for further directions; and upon reading the *posse* of the verdict, the defendants' counsel prayed a new trial; but upon reading an affidavit on his behalf, and on debate,

IT IS ORDERED AND DECREED BY THE COURT, that the defendant *Heath* shall satisfy and pay to the plaintiff, or her assigns, the said *modus* of eighteen shillings a year, *viz.* four shillings, and sixpence, a quarter, for the time he hath been occupier of the said house and it is hereby referred to the deputy remem-

UMFREVILLE
against
HODGES
AND OTHERS.
HILARY TERM
4 JAC. 2.

The widow and executrix of *William Umfreville*, late rector of *St. Botolph, Aldgate*, demands tithes of houses in the defendant's possession.

An issue to try what rates are to be paid in lieu of tithes.

The jury find a *modus* of 18s. a-year, payable quarterly.

The *modus* decreed to be paid accordingly.

UMFREVILLE
against
HODGES
AND OTHERS.

remembrancer to state and compute how many years the defendant hath been occupier of the said house, and what is due from him to the plaintiff, both for the *modus* and *Easter offerings*.

R. ATKYNS.
ED. NEVILL.
N. LECHMERE.
JOS. TURTON.

HILARY TERM
4. JAC. 2.

CROSSMAN *against* GOODRIDGE.

Somersetshire, 24th February 1688.

If a plaintiff
refuse to appear
and answer, the
bill shall betaken
pro confesso, and

THE plaintiff, as vicar of the vicarage and parish church of *Banwell* (a), in the county of *Somerset*, filed his bill against the defendant for small tithes,

on the plaintiff making oath of the value, the payment of the tithes be decreed.

S. C. Bunb. 26.
S. C. Rayn. 66.

The defendant, being duly served with a process of *subpœna*, neglected to appear to and answer the said bill, and being committed to *the Fleet*, was brought up to the bar of the court by *habeas corpus*, on the twenty-eighth of *November* last, to appear and answer the same, and the bill being read to him the first time, and he then refusing to appear and answer the same, he was remanded, and brought up a second time on the first day of this term, and still refusing, he was again remanded, and brought up a third time, on the first day of *February* instant, and again remanded, and brought up a fourth time on the seventh day of *February* instant, on which day he, having neither appeared or answered, obtained an order for time to *Easter Term* next, to answer the said bill, *without oath*, unless cause was shewn to the contrary, and on the thirteenth day of *February*, the plaintiff shewed cause, and prayed the said bill might be taken *pro confesso*, he, the plaintiff, refusing to accept the defendant's answer *without oath*, when it was ordered, that the order of the seventh of *February* instant should be discharged, and that the defendant should put in his answer by this day; and that if the defendant did not put in his answer, the warden of the *Fleet* should attend the court with the body of the said *William Goodridge*, on the twenty-fourth of *February*.

The defendant not having put in his answer to the bill, as by the said order he was directed, the warden attended with the defendant accordingly, and it was prayed, that the bill might be taken *pro confesso* against him.

(a) See *Chapman v. Lansdown*, post. 7. July 1790, Trinity Term, 30. Geo. 3.

And

And on hearing several counsel for the said defendant, and what could be alledged on both sides,

CROSSMAN
against
GODRIDGE.

IT IS ORDERED AND DECREED BY THE COURT (a), that the said bill be, and it is hereby taken, *pro confesso* against the said defendant.

AND IT IS FURTHER ORDERED, that the plaintiff do make oath of the value of the tithes (b) in the bill charged, not exceeding the sum of seventy-eight pounds in the whole for the twelve years in question, which sum, so to be made oath of as aforesaid, IS HEREBY ORDERED, ADJUDGED, AND DECREED (c) to be paid by the said defendant to the plaintiff accordingly.

(a) The Right Honourable SIR JOHN EARLE, Knt. chancellor and under treasurer of his Majesty's court of exchequer, the right honourable SIR EDWARD ATKYNS, Knight, lord chief baron, SIR THOMAS JENNER, Knight, and SIR

THOMAS POWELL, Knight, two other of the barons of the Court.

(b) See Bailey v. Peasley, Trinity Term, 5. Geo. 1. Raym. 144. Bunb. 26.

(c) The decree was signed by all present in the court, the chancellor, &c.

SIMPSON *against* HILL; *et à Contra.*

Yorksire, 2d July 1688.

TRIN. TERM.
4. JAN. 2.

THE bill stated, that *W. Pinkney*, being seised in fee of and in the rectory or parsonage impropriate of *Fisblake*, in the county of *York*, and of all tithes, both great and small, to the said rectory belonging, by indenture, dated the first of *May* 1683, did demise the same to the plaintiff for three years, whereby the plaintiff became entitled to the said rectory and tithes.

The lessee of the great and small tithes of the impropriate rectory of *Fisblake*, in *Yorksire*, claims the tithes of wool, hay, corn, &c.

The defendant said, that, during the years 1684 and 1685 as stated in the bill, he was owner of a messuage in the said parish, and eight acres and a half of arable, meadow, and pasture ground, and was also farmer of several parcels of arable, meadow, and pasture ground, therein; that in the year 1683, he had growing on his said lands wheat, barley, beans, peas, line, and flax, which he gathered without setting out his tithes, having compounded with the plaintiff for the same, and paid him the composition agreed on, and that the plaintiff accepted the same, in discharge of the said tithes; that he had paid to the plaintiff twenty shillings by composition, in full discharge of all tithes of wool and lamb, and other his *small tithes* and *Easter* reckonings, for the said year; that in the year 1684, he had growing on the said lands wheat, &c. the tithe whereof he duly set forth, and the plaintiff's servants gathered the same, and that he had paid the plaintiff one pound, fifteen shillings, by way of composition, in full of his tithes of wool and lamb as aforesaid, which he accepted; that in the year 1685, he had the same kinds of grain, the tithes whereof he duly set forth, and the plaintiff's servants

The defendant says he compounded for the year 1683, for his small tithes;

and also for 1684;

and also for 1685.

gathered

SIMPSON
against
HILL;
et Contra.

That there is a
modus of 4d. an
acre payable at
Easter, in lieu of
the tithe of hay
made in the an-
cient inclosures;

that the manner
of tithing corn, in
the ancient inclo-
sures, is by setting
out the tenth
sheaf, but not to
stack it;

that the same
custom prevails
in the common
fields.

The defendant
also filed a *cross*
bill, charging the
modus of 4d. an
acre for hay, and
the tenth sheaf
for corn, as above-
mentioned.

The plaintiff ad-
mits the pay-
ment, but denies
them to have
been in full sa-
tisfaction of
tithes;

gathered the greatest part thereof, and that he paid the said plaintiff forty shillings for his tithe wool and lamb, &c. for the said year due, before the answer, and should be willing to pay the plaintiff for all his small tithes and *Easter* offerings, as they should become due; that in the said years he had made great quantities of hay, and carried same away from off the ancient inclosures, without setting out the tithe thereof, as he lawfully might do, for by prescription and custom the farmers and occupiers of land, within the said inclosure in *Fisblake*, have customarily, and time out of mind, been discharged of tithe hay in kind, by payment of fourpence an acre at *Easter*, to the occupiers, owners, and farmers of the said tithes, in lieu and satisfaction thereof, and that the defendant has paid for the year 1683, and 1684, after that rate, and is willing to pay the same for 1685; that the manner of setting forth and paying tithe corn, in the ancient inclosures and common pastures, hath been some times by throwing out the tenth from the nine sheaves, when the inhabitants reaped and bound up their corn, and sometimes the inhabitants have set up the same in stacks, which he believed was in kindness to the farmers and occupiers of the said tithes, and not of right; that the inhabitants never considered themselves obliged to stack their corn in the ancient inclosures; and that the general custom in the common arable fields is to set out their tithes by separating the tenth sheaf from the nine, and whensoever the same was set in stacks it was kindness, and was never required as a duty until of late by the said plaintiff.

The defendant exhibited his *cross bill* against the plaintiff, and prayed a discovery, whether the plaintiff had not gathered and received the tithes, as well great as small, claimed by him, or the greatest part thereof, in kind, or some, and what satisfaction by agreement, composition, or otherwise in lieu thereof, and particularly, if there be not a custom within the said rectory of *Fisblake*, that the farmers and occupiers of meadow ground in the ancient inclosures there have constantly, and time out of mind, paid fourpence an acre yearly at *Easter*, in lieu, satisfaction, and full discharge of tithe hay, in the said ancient inclosures, and what is the manner of tithing corn as well in the ancient inclosures, as in the common arable fields there.

The plaintiff answered, and confessed, that in the year 1683 he had received six pounds in satisfaction of tithe corn, line, and flax, but denied that he received twenty shillings in discharge of tithe wool and lamb, small tithes, and *Easter* offerings for that year, but that he received two pounds, six shillings, for tithe wool of thirty sheep, and five shillings for tithe of twenty lambs, which was all the plaintiff paid after the first of *May* in that year, except a tithe pig; that in the year 1684, the defendant *Hill* reaped and carried away the greatest part of the corn he had growing

growing that year, before he had notice thereof, and believed the tithe thereof was not duly set forth, but his servant gathered what tithes were set out; that in the said year, the said *Hill* paid him twopence halfpenny, for house dues; for offerings for himself and wife, fourpence; for six new led cows, ninepence; for a foal, one penny; for twenty-two acres and a half of meadow in the said *ancient inclosures*, fourpence an acre; for the tithe of wool for one hundred sheep, one penny a sheep; and for sixty lambs, threepence a piece; which was all the defendant *Hill* paid him that year; but he denied that he received the same in full, and believed several tithes were not accounted for in that year; that in the year 1685, the defendant *Hill* pulled and carried away a good quantity of flax or line without setting out the tithe thereof, or compounding for the same, and as for corn in that year, he believed that the tithes thereof were not justly set out, but what was set out he gathered, except about twelve thrave, which *Hill* had thrown out in sheafs, contrary to the custom in the place where the corn grew; and he set forth the quantities and values of the several species of tithes he had received from *Hill*, on the fifteenth of *June*, in the said year, and denied that he received the same in full. He also said that *Hill* offered to account with him for twenty acres, and two roods of meadow in *the ancient inclosures*, which he had mowed and made into hay in that year, and to pay him fourpence an acre for the same, which he refused, as tithe hay was due in kind that year, by reason the plaintiff had not in that year set out his tithe corn growing in *the ancient inclosures*, in stack; that for fifteen years then last past (during which time he farmed the parsonage of *Fisblake*) it was reputed that it hath been a custom for every inhabitant within the said parish of *Fisblake*, being the occupier of any of *the ancient inclosures*, to pay fourpence for every acre at *Easter*, upon condition of setting forth the tithe corn he had growing within any of the said *ancient inclosures*, in stack; that the manner of setting forth tithe corn in *the ancient inclosures* there by the inhabitants of *Fisblake*, all along, since he was farmer, hath been to set out the same in *stack*, and not in *sheaf*; that the manner of paying tithe corn, in *the common fields* in *Fisblake* hath ever been to pay the same in *sheaf*, and whenever any person stacked their tithe corn there he looked on the same as a kindness only; and that hay gotten in *the common fields* is titheable in kind.

The plaintiff *Simpson* replied; and the defendant rejoined; and witnesses were examined in that cause only.

A trial at law was ordered to be brought by the plaintiff *Simpson*, against the defendant *Hill*, the issue to be, “Whether there be not a general custom, time out of mind, within the parish of *Fisblake*, throughout the said parish, that all the inhabitants of the said parish, occupiers of lands in *the*

SIMPSON
against
HILL,
et c. Contra.

and says that the tithe of hay in *the ancient inclosures* is due in kind; and that the tithe corn ought to be stacked;

and that the custom of paying 4d. an acre at *Easter*, for hay in the ancient inclosures, was on condition of setting out the tithe corn in stack;

and that the custom of setting out the tithe corn in *sheaf* prevailed in the common fields only.

2d July 1688.
An issue directed to try whether corn in the ancient inclosures ought to be set out in *sheaf* or in *stack*.

SIMPSON
against
HILL,
et à Contra.

" *ancient inclosures* within the said parish, ought yearly to set
" out their tithe *corn*, which grew upon those lands, *in stacks*,
" and to pay the tithes thereof in stacks, or to pay their tithes
" thereof *in sheaf*, before the same be stacked?" The question as
to the small tithes demanded by the plaintiff *Simpson*, and the
matters comprised in the cross bill, to stay until the said trial be
over.

A verdict that it
ought to be set
out *in sheaf* only.

A trial was accordingly had on the said issue, and after a full
and fair trial, a verdict passed for the defendant *Hill*, upon the
said issue.

The cause now, viz. the twenty-fifth of *November* 1689,
came on for further directions. The defendant's counsel prayed
that the custom may be decreed according to the verdict. The
plaintiff's counsel insisted that there was money due and in ar-
rear to *Simpson* from *Hill* for tithes, as also to have costs spared
in this court.

The Court of o-
pinion that the
modus of 4d. an
acre for hay in
the ancient in-
closures is good ;

But forasmuch, as upon reading divers depositions of wit-
nesses, it appeared to the Court, that there is and hath been a
general custom used in *Fisblake*, that the owners, farmers, and
occupiers of any meadow ground within *the ancient inclosures*, in
Fisblake, and particularly of the inclosed meadow ground there
(whereof the defendant is owner), time out of mind, had been and
ought to be discharged of tithes of hay yearly coming and re-
newing on the said meadows, by payment to the owners, farmers,
and occupiers of the said tithes of fourpence an acre, for every
acre of the said meadow mowed by them, yearly at *Easter*, and
that the same, time out of mind, had been constantly so paid to
and accepted by the said owners, farmers, and occupiers, of the
said tithes accordingly and that the said defendant *Hill* had
paid and satisfied the said *Simpson* the same *modus* in discharge
of all his tithes of hay of his said inclosure and meadow ground
in the bill mentioned, and that he hath also paid all other his
tithes mentioned likewise in the said bill.

and that the de-
fendant hath paid
the same.

The defendant
therefore, as to
tithe hay, is dis-
missed.

THE COURT doth therefore hereby order, that the said *Hill*
stand and is hereby absolutely dismissed this court of and from
the said bill, and the matters and things therein contained with
his costs.

And that as to the custom set forth in *Hill's* cross bill, and
for which a verdict had passed for him,

And as to tithe
corn in the an-
cient inclosures
it is ordered to be
set out hereafter
in sheaf, accord-
ing to the ver-
dict.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the
Court, that as well the said plaintiff *Hill*, as all other the inha-
bitants of the said parish of *Fisblake*, being owners and occupiers
of lands in *the ancient inclosures*, within the said parish, may, for
the future, pay to the plaintiff their tithe corn, which shall for
the time to come happen and grow upon those lands, *in sheaf*,
before the same be stacked, according to the said verdict, and
according

according to the custom and usage of the same parish, and shall not be obliged to pay the same *in sack*, or otherwise than as aforesaid.

SIMPSON
against
HILL,
et c. contra.

And the said *Simpson* shall likewise pay to the said *Hill* his costs expended in this suit and at law, to be taxed by the deputy remembrancer of this Court.

The plaintiff to
pay cost both at
law and in equi-
ty.

EDW. NEVILL.
NICH. LECHMERE.
JOS. TURTON.

WASHBURNE *against* NUNNELLY.

TRIN. TERM,
4. JAC. 2.

Northamptonshire, 12th July 1688.

THE bill stated, that the plaintiff, as owner of the rectory impropriate of *Pitchley*, in the county of *Northampton*, had been for seventeen years before the filing of his bill, entitled to all sorts of tithes both great and small arising therein; that the defendant, for the said time, had been possessed of land in the said parish, and in the adjacent parishes of *Orlingbury* and *Cransley*, and kept sheep in a close called *Kinningham*, within the said parish of *Pitchley*; that with intent to defraud the plaintiff of the tithe thereof, he had removed his ewes before and near the time of yeaning, and his other sheep before and near the time of shearing, out of the said parish into the said parish of *Orlingbury*, the tithes of lambs and wool whereof the plaintiff had always demanded, but which the defendant had refused to pay; that the defendant had, for several years, wintered on his lands in *Orlingbury* and *Cransley*, numbers of his sheep, and about *Lady Day* yearly removed them into his lands in *Pitchley*, and kept them till about *Midsummer*, about which time the plaintiff demanded tithe wool, which the defendant refused to pay; that the defendant stocked yearly his land in *Pitchley* with barren and unprofitable cattle, and refused to pay tithe of the herbage for the same, after the rate of two shillings in the pound.

The rector of
Pitchley in *Nor-*
thamptonshire, de-
mands tithes of
ewes fraudu-ent-
ly removed into
an adjoining pa-
rish near shear-
ing time; of tithe
herbage at 2s. in
the pound; and
of wool.

The defendant confessed, that he had for several years rented of *Lord Crew* several lands in *Pitchley*, and kept thereon horses, cows, sheep, and bullocks, and made profit of his lands, for which tithe were paid in kind; that he also rented lands in *Orlingbury*, and occupied the said close called *Kinningham*, in *Pitchley*, and lands in *Cransley*, and depastured thereon ewes and other sheep and cows, but denied all fraud in removing them, with intent to hinder the plaintiff of the tithes of lambs and wool, or other tithes; and as for the tithe of herbage of dry and unprofitable cattle, he insisted upon a custom, time out of mind used within the said parish, of paying one penny for

The defendant
denies the im-
puted fraud,

and states a mo-
dus of 1d for e-
very barren cow,
in lieu of tithe
herbage,

WASHBURN
against
NUNNELLY.
and a particular
custom of taking
tithe wool.

every barren cow, in lieu of the tithe thereof; and for tithe ~~wool~~, that the manner of tithing within the said parish of *Pitchley*, time out of mind, was as followeth, viz. that on *the first of January*, in every year, the number of sheep are computed, and if there are so many sheep at shearing time, the impropiator hath his full tithe wool, and so many as are shorn; and if the number which was at *New Year's Day* fall short, the impropiator has for each sheep a halfpenny, and if more, only a halfpenny for every sheep above the number that was there on *New Year's Day*; and he said, that according to the usage aforesaid, he hath constantly paid his tithe wool.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

The defendant
adjudged guilty
of the fraud;

Upon reading the depositions on both sides, and on full debate it sufficiently appeared, by the proofs taken in the cause, that the defendant had, for several of the years mentioned in the bill, driven away his ewes depasturing upon his lands within the parish of *Pitchley*, near before the time of their yeanning, to his lands in the parish of *Orlingbury*, which the Court adjudged to be an apparent fraud, and done with intent to deceive the plaintiff of the tithe of the lambs of those ewes, so removed as aforesaid, and for which the defendant ought to be accountable to the plaintiff.

and ordered to
pay the tithe of
lambs according
to the number
of ewes remov-
ed.

IT IS THEREUPON ORDERED BY THE COURT, that the defendant do account with and pay to the plaintiff for the value of the tithes of the lambs of those ewes, which, by the proofs taken in the cause, appear to have been depasturing upon the said defendant's lands in *Pitchley*, for and during the years mentioned in the bill, or any of them, and which were, near before the time of their yeanning, driven away out of the said parish of *Pitchley*, into the said defendant's lands in *Orlingbury* aforesaid; and it is referred to the deputy remembrancer to take the said account.

And as to *the modus* of one penny for every barren cow set forth in the answer, in lieu of tithe *herbage*, and also as to the said manner of tithing or paying tithes for *wool*, within the said parish, set forth in the said answer; and as to the payment of costs, the Court reserve the consideration thereof.

In pursuance to the said decree, the deputy remembrancer made his report, dated the twenty-second of *October* last, and no exceptions having been taken, the cause came on, on the eighteenth of *November* 1689, for further directions upon the said report, and upon reading the same,

IT IS ORDERED AND DECREED BY THE COURT, that the said report be, and the same is hereby ratified and confirmed, AND
THAT

THAT the said defendant do pay to the plaintiff nine pounds, so reported to be due for tithe lambs in 1685.

WASHBURN
against
NUNNELLY.

AND IT IS FURTHER ORDERED, that the said defendant do account with and pay to the plaintiff, for the value of the tithe herbage of the dry and barren bullocks depastured by the defendant upon his said lands in *Pitchley*, for the time demanded by bill, according to the proofs in the cause, and it is referred to the deputy to take the said account.

And also the
tithe of herbage
for dry and bar-
ren cattle.

But as to the said custom or manner of paying tithes for *wool*, within the said parish, set forth in the answer,

The custom of
tithing the wool
adjudged a good
custom.

THE COURT doth adjudge the same to be a good custom.

THE COURT FULL.

KING'S COLLEGE, CAMBRIDGE, against MASCALL
and Others.

TRIN. TERM,
4. JAN. 2.

Warwickshire, 5th July 1688.

THE bill stated, that the plaintiffs, the provost and scholars of *King's College*, in *Cambridge*, being seised in fee, in right of the said college, of and in all the rectory impropriate of *Wooton Wabons*, in the county of *Warwick*, and of all tithes, pensions, and portions of tithes thereunto belonging, of which said rectory impropriate the tithes, pensions, and portions of corn, grain, and hay of the towns of *Wooton*, *Henley*, *Whitby*, *Uttenhall*, *Osford*, *Edeston*, and *Bearley* are part, all which said tithes of corn, grain, and hay, by indenture dated the sixth of *November* 1682, they demised to the plaintiff *Lord Carrington*, to hold the same for twenty years; that *Lord Carrington* thereby became entitled to all the said tithes, and ought to have received the same; that for such tithes, pensions, and portions within the said parish, as are not demised to the said plaintiff, the other plaintiffs are seised thereof in fee; that ever since the year 1682, the said defendants have been inhabitants in *Bearley*, within the said rectory, and owners or possessors of several messuages, lands, meadow and pasture grounds, lying in the town fields and precincts of *Bearley*, within the said parish of *Wooton*, and had wheat and other grain, hay, flax, hemp, and a number of horses, cows, sheep, lambs, wool, &c. &c. the tithes or tenth whereof ought to have been paid to the said plaintiffs, according to their respective rights thereunto: therefore the said bill prayed a discovery of the lands, &c. and also the values of the tithes, and that the plaintiffs may examine their witnesses *in perpetuam rei memoriam*.

King's College, in
Cambridge, and
their lessee *Lord*
Carrington, claim
the tithes of the
rectory of *Wooton*,
in *Warwickshire*.

The defendant *Mascall* insisted, that all the lands of *Mrs. Rogers*, lying in *Bearley*, in his possession (except the three tithe

The defendants
say their lands
are tithe free.

KING'S
COLLEGE,
CAMBRIDGE,
against
MASCALL
AND OTHERS.

Pieces, and *Tithe Acre*), are discharged of the payment of tithes of corn and grain, and that there was a *modus* of six shillings, and eightpence, for the other tithes thereof.

The defendant *Warren* insisted, that all his lands in *Bearly*, (except *six lands* a gore in *Oldhill*, twelve lands in *Frankwell Field*, six lands called *the Tithe Piece*, and two lands called *the Tithe Acre*), are likewise discharged of the payment of tithes of corn and grain, and that he had the like *modus* of six shillings, and eightpence, for his other tithes of those lands.

Both the said defendants had paid the tithe corn of the said excepted lands to the plaintiff *Lord Carrington*, and also had paid the said rates of six shillings, and eightpence, a-piece to the vicar of *Bearly*.

And that the plaintiffs are entitled to the first crop of *the Tithe Pleck*, in lieu of the tithe of *Dole Meadows*.

The defendants *Mascall*, *Perks*, and *Ryland*, insisted that the owners of the impropriate tithes of *Bearly*, and their farmers have, time out of mind, had and enjoyed the first crop or math of a certain parcel of meadow in *Edestone*, called *the Tithe Pleck*, in full satisfaction and discharge of all the tithes of hay of certain parcels of meadow in *Bearly*, called *Dole* or *Lot Meadows*, and that for their other lands, they had paid their tithe corn to *Lord Carrington*, and their small and privy tithes to the vicar of *Bearly*, for the time in the bill charged.

Upon reading a lease, dated the sixth of *November 1682*, from the *College* to *Lord Carrington*, the Court directed *Lord Carrington* to try an action against the defendants *Mascall*, *Perks*, and *Ryland*, upon two issues;

An issue to try whether the lands are tithe free;

FIRST, Whether the lands of the said *Mrs. Joyce Rogers*, lying in *Bearly*, in the possession of the defendant *Mascall*, and by him in his answer alledged to be discharged from the payment of tithes, or any and what part thereof, be discharged of the payment of tithes of corn and hay, or not?

and whether the crop of *tithe pleck* is in lieu of *Dole Meadows*.

SECONDLY, Whether the first crop of grass or hay arising from a piece of meadow, lying in *Edeston*, called *the Tithe Pleck*, and received by the impropriator, doth discharge all the ancient *Dole* or *Lot Meadows* in *Bearly*, or not?

AND IT IS FURTHER ORDERED, that as to the six shillings, and eightpence, claimed by the said plaintiffs, the provost and scholars, for the small tithes of the defendant *Warner's* lands, the said defendant shall be and he is hereby dismissed of and from the said bill, and the matters and things therein contained.

AND IT IS FURTHER ORDERED, that as to the rest of the tithes in *Bearly*, now in question, the same are to stay till the said trial be had.

The issues found against the plaintiffs.

A trial was had and both the said issues were found against the plaintiffs. THE FIRST ISSUE, "That the said lands of the said
" *Joyce*

“ *Joyce Rogers*, lying in *Bearly* aforesaid, in the possession of the
 “ said defendant *Mascall*, are and every acre thereof (except the
 “ said pieces of land called *the Three Tithe Pieces*, and the *Tithe*
 “ *Acre*), is discharged from the payment of tithes of corn and
 “ hay.” And as to THE OTHER ISSUE “ That the owners of
 “ the impropriate tithes of *Bearly* aforesaid, and their farmers,
 “ for the time being, from the time whereof the memory of man
 “ is not to the contrary, have yearly had and enjoyed the first
 “ crop of the said parcel of meadow in *Edeston* called *the Tithe*
 “ *Pleck*, in full satisfaction and discharge of all tithes of hay,
 “ yearly growing, coming, renewing, or happening in and
 “ upon the said parcels of meadow called *the ancient Dole* or *Lot*
 “ *Meadows*, in *Bearly* aforesaid.”

KING'S
 COLLEGE,
 CAMBRIDGE,
 against
 MASCALL
 AND OTHERS.

This cause came on upon the equity reserved, on the twenty-
 fifth of *November* 1689, and upon reading the said order and
postea and on full debate. the Court not seeing any cause for
 relieving the plaintiffs in their said bill,

IT IS ORDERED AND ADJUDGED BY THE COURT, that the Bill dismissed.
 plaintiffs bill be and is hereby dismissed (a).

ROB. ATKYNS.
 EDW. NEVILL.
 NICH. LECHMERE.
 JOS. TURTON.

(a) No costs mentioned.

BROOKE against ABBUTT and Others.

Suffolk, 12th July 1688.

TRIN. TERM,
 4 JAC. 2.

THE bill stated, that the provost and scholars of *King's Col-*
lege, in *Cambridge*, being seised in fee of and in the tithes,
 oblations, and offerings, and of the rents of freehold and
 copyhold in *Lindsay*, in the county of *Suffolk*, did by indenture
 demise and grant the said tithes and premises for a long term
 to *Ann Eade*, widow, who was possessed of the same, and after-
 wards, on the second of *January*, in the thirty-third year of
 CHARLES THE SECOND, by indenture, dated the same day, did
 demise the premises to the plaintiff, by virtue whereof he en-
 tered, and was and is entitled to the tithes of grass and hay, and
 of all sorts of corn and grain, yearly arising, &c. in and upon
 one messuage and the lands thereunto belonging, called *Lindsay*
Farm, otherwise *Harkes*, in *Lindsay*, and also to *Baker's Farm*,
 and ought to have enjoyed the tithes thereof; that the said de-
 fendants, or some of them, have held and enjoyed the same
 for several years past, and have had great quantities of grass and
 hay, and of corn and grain, yearly growing thereon, and had
 reaped and carried away the same, without making any agree-
 ment or satisfaction for the same.

The provost and
 scholars of *King's*
College, in *Cam-*
bridge, are en-
 titled to two third
 parts of the tithes
 of *Lindsay Farm*,
 and to one third
 part of *Baker's*
Farm, in the pa-
 rish of *Lindsay*, in
 the county of
Suffolk.

S 4

A trial

BROOKE
against
ABBUTT
AND OTHERS.

A trial at law was ordered to be had by the plaintiff against the defendant *Abbutt* only; the issue to be, “ Whether the
“ plaintiff hath any right or title to any part, and what part,
“ of the tithes of the farms called *Lindsay Farm*, and *Baker’s*
“ *Farm*, with the lands thereunto belonging, lying in *Lindsay*,
“ in the county of *Suffolk*, (except the tithes of half an acre
“ lying within *Lindsay Farm*, which the defendant now dis-
“ claims)?”

14th May 1691.

A trial was had, and a verdict was found for the plaintiff, but it being ineffectual, a new trial was directed, and the plaintiff became non-suited for want of producing the lease from the college to *Ann Eade*, as above stated; the Court therefore directed a new trial to be had upon the plaintiffs paying costs taxed for the said non-suit within a week, otherwise the bill to be dismissed. The plaintiff gave notice of trial for the assizes, and the defendant attended at a great expence, but the plaintiff not attending, the defendant, on the fourteenth of *May* 1691, prayed that the said bill may stand dismissed, and to have his costs, and the plaintiff appearing by counsel, it was ordered that the plaintiff shall pay to the defendant ten pounds for his costs and charges in attending the said assizes, and on paying the same be at liberty to proceed to trial.

The cause was not tried at the assizes, but was referred to arbitration, but the referee not making any award, but rather a certificate, the Court, on the fourth of *February* 1692, upon reading the certificate, ordered, that a trial at law be had upon the former issue directed, and that the counterpart of a lease, made by the provost and scholars of *King’s College*, in *Cambridge*, to *Ann Eade*, widow, dated the twenty-fifth of *November*, in the thirty-third year of *Charles the Second*, be allowed for evidence, without proving the same at the trial.

A new trial was accordingly had upon the former issue, upon which trial the jury found that the plaintiff hath right and title to *one third part* of the tithes of the farm and lands called *Baker’s Farm*, and *two third parts* of the tithes of the farm and lands called *Lindsay Farm*.

Upon reading the *poslea* of the said verdict, and hearing counsel, and on full debate,

10th May 1692.

IT IS ORDERED AND DECREED, that the several defendants shall account with and pay to the said plaintiff *two third parts* of the tithes of the farm and lands called *Lindsay Farm*, and also *one third part* for *Baker’s Farm*, for the times they severally held the same, or any part of them, unless cause be shewed to the contrary; and it is hereby referred to the deputy remembrancer to take the said account.

The

The cause coming on to be further heard on the second of *June* 1692, the defendants counsel prayed that they may be discharged of costs; but the Court declared unanimously, that the defendant *Abbutt* ought to pay the plaintiff his costs; and therefore it was ordered, that the said order of the tenth day of *May* last be, and the same is hereby made absolute, with costs, to be taxed by the said deputy remembrancer to whom it is hereby referred to tax the same.

Books
against
ABBUTT
AND OTHERS.

ROB. ATKYNS.
NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

SKIPWITH *against* PICKERING and Others.

TRIN. TERM,
4 JAC. 2.

Lincolnshire, 5th July 1688.

THE bill stated, that the *Bishop of Lincoln*, being seised in right of his church, to him and his successors of and in the rectory impropriate of *Barney*, in the county of *Lincoln*, did by indenture, dated the ninth of *December*, in the twenty-seventh year of CHARLES THE SECOND, demise the same to the plaintiff for twenty-one years, at the yearly rent of thirteen pounds, six shillings, and eightpence, ten quarters of barley, and ten lambs, payable at the days mentioned, by virtue whereof the plaintiff ever since became entitled to, and ought to take and receive all tithes and rates for tithes of the land lying within the said parish.

The plaintiff
claims the tithes
of the rectory of
Barney, in *Lin-*
colnshire.

The defendants answered, and set forth the lands by them severally held, and what titheable matters and things they severally held and kept in and upon their grounds within the said parish, and said, that their said lands are parcel of the possessions of the abbey of *Bardney*, which was one of the great monasteries, and came to the crown by the dissolution in the thirty-first year of *Henry the Eighth*, and either being parcel of the demesne of the said abbey, or by prescription, unity of possession, bull, or other discharge or exemption, their said lands are, and ought to be freed from the payment of tithes, and insisted upon all legal discharges of tithes that can be made out.

The defendants
say their lands
are tithe free.

Upon reading a lease made in the thirtieth year of *Henry the Eighth*, to *R. Turwhitt* and *J. Hennage*, of the lands which were in the proper culture and occupation of the said abbot and convent of *Barney*, at the time of the dissolution of the said abbey, for forty-one years, and the bailiff's accounts, and other matters belonging to the said abbot and convent, and also on reading the depositions taken in the cause, and on full and deliberate hearing, a trial at law was thereupon ordered, the

An Issue directed.

issue

SKIPWICK
against
PICKERING
AND OTHERS.

issue to be " Whether the lands in the defendant's answer
" mentioned to be by them severally held and enjoyed within
" the parish of *Barney*, or any, and which of them be titheable
" to the plaintiff, as farmer of the rectory of *Barney* aforesaid,
" or not," to be tried before THE LORD CHIEF BARON, by a
jury of *Middlesex*. But, upon the seventh of *July*, it was or-
dered, that the aforesaid issue should be tried at *Lincoln*, and
that at the said trial, the said defendants should admit the plain-
tiff's title to the rectory of *Barney*.

The plaintiff is
non-suited.

The issue came on to be tried accordingly, and after a full
evidence given, the plaintiff became nonsuited.

The cause coming on the twenty-fifth of *November* 1689,
to be heard on the *possea*, upon reading the said *possea* of the said
non-suit,

The defendants
dismissed.

IT IS ORDERED AND ADJUDGED BY THE COURT, that the
defendants be absolutely dismissed of and from the said bill, and
the matters and things therein contained (a).

ROB. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOS. TURTON.

(a) But see the case of the Bishop of
Lincoln v. *Ellis*, 16th of May, 1722,
Trinity Term, 8. Geo. 1. in which the

tithes of this parish are decreed to the
Bishop of *Lincoln*.

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
DURING
THE REIGN OF WILLIAM AND MARY.

SIDDENHAM *against* BARRETT.

Somersetshire, 20th June 1690.

TRIN. TERM,
1. WIL. & MAR.

THE plaintiffs, as surviving trustees of *John Lord Pavlett*, deceased, filed their bill, stating that for several years past they had been entitled to all tithes of corn, grain, hay, wool, and lamb, and other titheable matters and customary payments and compositions in lieu of tithes, due and payable to the farmers and impropriators of the rectory of *Yatton*, in the county of *Somerset*; that the defendant had been owner, occupier, and possessor of land therein, and kept ewes and weathers, and had fallen lambs, and had shorn wool, and had not given any satisfaction for the said tithes of wool and lambs. The bill therefore prayed a discovery and satisfaction for his tithes.

The ground called *Great Weambram*, in the parish of *Yatton*, in the county of *Somerset*, pays a modus of 4d. an acre to the vicar, in lieu of all tithes arising out of the said grounds.

The defendant said, that he held three quarters of a piece of land called *Great Weambram*, in the said parish of *Yatton*, containing one hundred and fifty acres, and that, in the said years, he had kept upon the same weather sheep yearly, and always sold the said sheep, in a short time after they were there; that they were always shorn and clipt at the defendant's house, or upon other lands where they were usually fed,

SIDDENHAM
against
BARRETT.

fed, out of the said parish and the titheable places thereof, before they were depastured upon the said pasture ground called *Great Weambram*, and that he never shored any sheep within the said parish, as in the bill is charged, and had but one lamb yeaned in the said parish, and that no tithes of lamb or wool were ever demanded of him but by *the vicar*, and that he paid him yearly fourpence an acre for his share of the said ground, which he believed to be the usual *modus*, or payment in discharge of all tithes whatsoever, for the said ground.

A trial at law was directed to be brought by the plaintiff, against the defendant, upon this issue, “ Whether by custom, “ time out of mind, the sum of fourpence an acre, for every “ acre of the said ground, called *Great Weambram*, in the parish “ of *Yatton*, paid yearly to the vicar of the said parish of *Yatton*, “ for the time being, be in lieu and full satisfaction of all “ manner of tithes whatsoever, payable out of the said ground “ called *Great Weambram* ? ”

A trial was accordingly had, and the jury found, that fourpence an acre was yearly paid to the vicar of the parish of *Yatton*, in lieu and satisfaction of all tithes of all fruit, hay, wool, and lamb whatsoever, for the ground called *Great Weambram*, by the occupiers or possessors thereof.

Upon reading the *posse*,

IT IS ORDERED AND ADJUDGED BY THE COURT, that the defendant shall be, and is hereby dismissed of and from the bill, and the matters therein contained.

R. ATKYNS.
ED. NEVILL.
N. LECHMERE,
JOS. TYRTON.

MICH. TERM,
1. WIL. & MAR.

STRODE against BICKHAM and ELLIOT.

Somersetshire, 29th November 1689.

The rector of *Meere*, in *Somersetshire*, claims tithes of land, formerly covered with water, called *Meere Pool*.

THE plaintiff, as farmer of the rectory of *Meere*, in the county of *Somerset*, stated, that he was entitled to tithes of corn, teasills, grain, grass, hay, and other tithes, and to all customary payments in lieu thereof; and that there was an ancient pool of water, containing five hundred acres, within the said parish, lately drained by the defendant *Bickham*, the tithes of corn, grain, and hay whereof, and for depasturing of cattle thereupon, were worth twenty-five pounds; that the defendants were owners of divers lands within the said parish; and particularly the defendant *Elliott* was possessed of a farm called *Godney Farm*, within the said parish, and had great quantities of titheable matters; that the defendant *Bickham* possessed several acres of

of land, called *Meere Poole*, and had divers quantities of corn and other titheable matters, and also a *decoy pool* within part of *Meere Pool*, whereof the tenth wild duck, by custom, ought to be paid for tithe ; that the defendants had divers other lands within the said rectory, for which they ought to have paid tithes ; but that they refuse to pay the same.

STRODE
against
BICKHAM
AND ELLIOT.

The defendants appeared ; and the defendant *Bickham* insisted, that there was an ancient pool of water, which was formerly a *fish pool*, called *Meere Pool*, containing five hundred acres, within the said parish, which had been drained about seventy years, whereof he possessed great part, and some part called *New Cutts* ; but that no tithe was payable for the same, for that the said parcel of ground, called *Meere Pool*, was formerly a fish-pond belonging to the abbot of *Glastonbury*, and in his hands at the time of the dissolution of that abbey, and on that account was, by law, discharged from the payment of tithes. He confessed, that he possessed the *decoy pool*, and took one hundred couple of wild fowl ; but insisted that the same, being parcel of the *fish-pool*, called *Meere Pool*, was, for the same reasons, discharged from payment of tithes. He also insisted, that there was a custom, time out of mind, within the manor of *Godney*, within the parish of *Meere*, that for all lands and tenements within the said manor, which are or were copyhold tenements, there have been, time out of mind, paid, in lieu of tithes for the same, the rates following, viz. where the lord's rent reserved for such copyhold was above twelvepence an acre, three halfpence an acre ; where such lord's rent reserved was but twelvepence, then one penny an acre ; where such lord's rent reserved was under twelvepence, then one halfpenny an acre, in lieu of all tithes for such copyhold lands and tenements ; and he confessed that he possessed copyhold lands, and was ready and offered to pay to the plaintiff after that rate for his tithes ; but said, that the plaintiff had refused to receive it.

The defendants say, that *Meere Pool* was formerly a *fish pond* belonging to the abbey of *Glastonbury*, and so discharged of tithes ;

and insists on a customary manner of tithing copyhold land.

The defendant *Elliott* confessed, that he possessed several acres of *Meere Pool* ; and insisted that, as it formerly belonged to the abbot of *Glastonbury*, it was, by law, discharged from the payment of tithes. He insisted, that the farm, called *Godney Farm*, did formerly belong to the said abbey of *Glastonbury*, and was so discharged as aforesaid. He said, that he likewise possessed copyhold lands in the said manor of *Godney*, and insisted on the same *modus decimandi* as the other defendant ; and averred, that he was always ready to pay the plaintiff after that rate ; but that he had refused to receive the same.

Upon hearing what was alledged by counsel on either side, and on reading the proofs taken in the cause, and on debate,

THIS

STRODE
against
BICKHAM
AND ELLIOT.

he court of o-
pinion, that
Meere Pool is
tithe free, and
Godney Farm on-
ly liable to the
modus.

THE COURT was of opinion, and so declared, that the parcels of land which were part of *Meere Pool* and *Godney Farm* were, for the reasons set forth in the defendant's answer, discharged from the payment of tithes, and that there was such a *modus decimandi* for such copyhold lands and tenements as are or were parcel of *Godney Manor*, and within the said parish of *Meere*, as in the said answer is set forth.

IT IS THEREUPON ORDERED AND ADJUDGED, that the said bill be dismissed with costs to be taxed.

R. ATKYNS.
ED. NEVILL.
N. LECHMERE.
JO. TURTON.

MICH. TERM,
1. WIL & MAR.

KENT against PETTIVER and Others.

Warwickshire, 25th. November 1690.

The plaintiff, as
vicar of *Pryor*
Hardwick, in
Warwickshire,
claims the small
tithes arising in
Pryor Marston.

THE bill stated, that the plaintiff was inducted into the vicarage of the parish-church of *Pryor Hardwick*, in the county of *Warwick*, and entitled to tithes of the said vicarage; that *Pryor Marston* is a member of *Pryor Hardwick*, and hath a church or chapel in it; that he hath officiated at both the said places; and that all small tithes whatsoever arising, &c. in *Pryor Marston* (except of such land as belongs to the *Earl of Sunderland*), are due and payable to him, as vicar of *Pryor Hardwick*, viz. the tithes of such pigs as are under or over the number of ten as have been usually paid, and the milk of every cow kept in *Pryor Marston* every ninth night and tenth morning, from the third of *May* until the first day of *August*.

The defendants
admit *Pryor*
Marston to be a
member of *Pryor*
Hardwick, but
deny that the
plaintiff is en-
titled to the
tithe of hay in
the common fields
of *Pryor Mar-*
ston;

The defendants said, that *Pryor Marston* is a member of *Pryor Hardwick*, having a chapel wherein the plaintiff hath officiated; that the owners of the rectory impropriate do receive the tithes of corn, wool, and lamb, and that the plaintiff hath no more claim to tithe hay than he hath to the tithes of that part of the parish, which is the estate of the *Earl of Sunderland*; that they are willing to pay to the vicar the value for their tithes of milk, and other small tithes, which is about six shillings, and eightpence, each yard land in *Marston Field*, where the greatest part of their estates lie; that the plaintiff hath no right to the tithe of hay in any part of the common fields in *Pryor Marston*; that tithe hay hath never been paid in kind within the fields of *Pryor Marston*; that they have been heretofore two fields, the *North Field* and *South Field*, which of late have been three fields; that in each of the said fields the vicar hath distinct plots of mowing ground, viz. one plot of meadow called *the Hedge*, being nearly as much as three men usually mow in one day; and several parcels of ground in *South Field*, viz. one parcel of ground

because the grafs
of different plots
of ground in the
said common
fields have been

assigned to the vicar in lieu of tithe hay.

in *Ball*, and one parcel of mowing ground called *the Pikes*, lying on *Woolland Leys*, one plot of meadow ground lying in *Dean*, and one parcel of mowing ground in *Da'e Meadow*; that the said plots are in lieu of tithe hay arising within the said respective fields; and that by reason thereof the fields in *Pryor Marston* have been discharged from the payment of tithe hay.

KENT
against
PETTIVER
AND OTHERS

The defendants *Bafeley* and *Goodwin* say, that they are possessed of some mowing ground in the fields of *Marston*, which are no part of the yard lands, but do belong to the inclosure of *Lady Rouse*, in *Pryor Hardwick*; and that there is a *modus* of thirty shillings a-year paid for all her inclosures in *Hardwick*, and for the mowing grounds in *Marston Fields*.

The plaintiff replied, and set forth, that tithe hay ought to be paid for hay arising in *the common fields* in *Pryor Marston*, and also in the inclosures in the answers mentioned, to the vicars of *Pryor Hardwick*; and that there hath heretofore been a satisfaction made to his predecessors for such tithes; that such plots and parcels of grounds as the plaintiff hath in the *common fields* of *Pryor Marston* are ancient glebe belonging to the vicarage there, and not any *modus* or satisfaction for the tithe hay claimed by him; that *T. Kent*, his predecessor, lately obtained a decree in this court against the said defendant *Pettiver* for tithe hay in *the common fields* in *Pryor Marston*.

The plaintiff insists on his right to the tithe hay of the common fields, and says the plots of ground alluded to are ancient glebe.

The defendants rejoined; and witnesses were examined; and on debate of the matter, a trial at law was directed upon two issues:

An issue directed to try,

FIRST, Whether all the hayground belonging to all and every the yard lands, and parts of the yard lands, within the common fields of *Pryor Marston* be discharged from payment of tithe hay to the vicars of *Pryor Hardwick*, in respect of the plots of mowing ground, the fore crop of which is alledged by the defendants to be entirely enjoyed by the said vicar in lieu thereof, or not?

Whether the common fields are discharged of tithe?

SECONDLY, Whether there be a *modus* of thirty shillings a-year payable to the vicar of *Pryor Hardwick*, for all tithes due to him in the inclosed grounds in *Pryor Hardwick* called the *Lady Rouse's Inclosure*, and the meadow ground in *Pryor Marston Field* thereunto belonging, or not?

Whether there is a *modus* of 30s. a year for the inclosed ground?

The plaintiff was willing to accept of the *small tithes* according to the values offered in the answers; and therefore it is ordered, that the defendants shall forthwith pay the same to the plaintiff accordingly.

The other small tithes decreed.

A trial was had; and as to THE FIRST ISSUE, a verdict passed for the defendants, that the same are discharged from the payment of tithe hay in respect of the said first crop of the mowing ground enjoyed

A verdict for the defendants on the first issue; and for the plaintiff on the second.

KENT
against
PETTIVER
AND OTHERS.

A new trial
prayed, but re-
fused.

The defendants
dismissed as to
the tithe hay in
the common fields;

and ordered to
pay tithes of hay
in kind for the
Inclosures.

Costs.

enjoyed by the vicar as aforesaid; and as to THE SECOND ISSUE, a verdict passed for the plaintiff against the *modus*.

The cause came on the thirteenth of *February* 1691 upon the equity reserved, when the plaintiff's counsel prayed a *new trial* upon the first issue, which the Court did not think fit to grant.

But, upon reading the decree and *postea*, ordered and adjudged, that as to the matter of THE FIRST ISSUE found for the defendants they be, and are hereby dismissed, with their costs only from the time of their answers, in regard thereby they have confessed some duties due to the plaintiff, which are decreed to be paid to the plaintiff by the said recited order, and are not avoided by the said trial.

And as to the tithes of the inclosed grounds, called the *Lady Rouse's Inclosures*, and the meadow grounds thereto belonging, for which the defendants *Bafeley* and *Goodwin* pretend a *modus* of thirty shillings a year, in discharge of tithes, for which a verdict passed for the plaintiff,

It is ordered, that the defendant *Bafeley* shall pay to the plaintiff for his tithes, for so much of those grounds as were occupied by him for the time demanded by the bill, the sum of ten shillings. And that the said defendant *Goodwin* is to pay twenty shillings for his tithe, and that the plaintiff is to have his costs against the defendants *Bafeley* and *Goodwin*.

MICH. TERM,
2. WIL. & MAR.

BULLIN against BRECKNOCK.

Lincolnshire, 21st November 1690.

The tithes of
wool, lamb,
corn, and grain,
with certain ex-
ceptions, are due
to the impropri-
ator of the rec-
tory of *Weston* in
Holland, in the
county of *Lin-*
coln, and not to
the vicar.

THE plaintiff was farmer of the tithes of the impropriate rectory of *Weston* in *Holland*, in the county of *Lincoln*. The defendant was vicar of the vicarage and parish church of *Weston*. The scope of the bill was to have a discovery respecting the tithes of corn and grain, wool and lamb, which the defendant in several years had renewing and increasing in and upon the several grounds by him farmed and held within the said parish of *Weston*, and to have satisfaction of the defendant for the same.

The defendant by his answer claimed tithes of *wool* and *lamb*, as belonging to him in right of his vicarage, by virtue of an ancient endowment, made in the year 1280, and, as to the tithe of corn, he alledged that he and his predecessors, vicars of *Weston*, had all along paid a rent or pension of thirteen shillings, and fourpence, a-year to THE CROWN in lieu thereof; and by means thereof they had been exempted and discharged of and from payment of any manner of tithes of such corn and grain of what kind or nature soever, which they sowed

towed or reaped within the said parish only for the maintenance of their families.

BULLIN
against
Bucknock.

Upon reading the depositions of the several witnesses examined on both sides, and also the endowment mentioned in the answer, and an account of the bailiff and collector of the revenues of the possessions of the late monastery of *Spalding*, in the thirty-second year of *Henry the Eighth*, and a lease made by the prior and convent of the said monastery, in the twenty-fourth year of *Henry the Eighth*, to *Sir John Poynton*, priest of the vicarage of *Weston*, with the tithes thereto belonging, during the life of the said *Poynton*, wherein the tithes of corn and line of the parishioners only, and tithe wool and lamb, are excepted; and forasmuch as the usage and custom for the payment of some of the tithes in *Weston* hath gone contrary to the endowment,

THE COURT was of opinion, that the tithes of corn and grain, wool and lamb (except as after-mentioned), are due and payable to the impropiator of *Weston*, and not to the vicar; and thereupon ordered and decreed, that the defendant shall account with and satisfy the plaintiff for the value of all such tithes of corn and grain, wool and lamb, as the defendant hath had renewing, &c. upon the grounds by him farmed, held, and enjoyed within the parish and the titheable places thereof. not being glebe lands, belonging to the vicarage, except the odds of wool and lamb, viz. under seven lambs and under seven fleeces, and also except the tithe or other composition usually paid of and for hay, barren and other cattle fed and depastured within the said parish of *Weston*, as well by the parishioners of the said parish, as by strangers and foreigners, and also except the tithe of coleseed, hempseed, and flaxseed, calves, foals, orchards, gardens, fruit, roots, herbs, milk, honey, eggs, and all other small tithes yearly arising and renewing within the parish; which several tithes of and for the said odds of wool and lamb, hay and pasture ground, fed as aforesaid, coleseed, mustard seed, &c. &c. have, as it appears, for several years last past been paid to the vicars of *Weston*, and so ought to be paid to the said defendant.

The tithes to which the vicar is entitled enumerated.

ROBT. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOHN TURTON.

DUMMER against WINGFIELD.

HILARY TERM
1. WIL. & MAR.

Buckinghamshire, 10th February 1690.

THE plaintiff, as rector of the rectory and parish church of *Hardwick cum Weeden*, in the county of *Bucks*, stated, by his bill, that for twenty years past he had been rector thereof, and

The manner in which the tithe of sheep are paid in the parish of *Hardwick cum Weeden* in the county of *Bucks*.

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against
WILCOX & SONS.

entitled to all tithes and duties arising within the same; that within the said parish great numbers of sheep have been usually kept, wintered, and shorn, the tithe of the wool whereof ought to be paid to the rector; that the parishioners, for the conveniency of keeping more sheep than they wintered, did frequently make an addition to their winter flock by bringing in sheep after *Lady Day*, which they also sheared; for which sheep so brought in after *Lady Day* they pretended that they ought not to pay tithes in kind, but a rate tithe of fourpence a score for each week they were kept before shearing time, in lieu of tithe wool; but that of right, and also by custom, tithes in kind of all wool shorn within the parish was due to the rector, or at least for all wool shorn from the sheep which were within the parish at *Candlemas Day*, or which were brought in after *Candlemas Day*, and before *May Day*, and there shorn; that in order to know the number of sheep in the said parish, there were anciently two views or tales, the one about *Candlemas Day*, and the other about *Lady Day* yearly, which were made by the parishioners on the one side, and by some person on behalf of the rector on the other; that the defendant's late husband was an inhabitant and occupier of lands and tenements, and kept a large flock of sheep, and had a dove-house, wherein were bred a great number of pigeons; that from shearing time in the year 1685 he kept great numbers of sheep till about *Christmas*; and, to defraud the plaintiff, then sold the same, and took in great numbers by agistment, or otherwise made profit thereby during the winter season, and until and after *Lady Day*, and then brought in divers sheep, which he shored about *June*, in the year 1686, for which he ought to have paid tithes in kind; and also a pasturage tithe for his sheep sold before *Christmas*, or taken in by agistment; but that he refused to pay the same, as also to pay tithes for his pigeons for the year 1675, and for the following years, until the year 1682; that about *August* 1686 he died, and that the defendant, as administratrix, possessed herself of, and entered upon, his real estate in the said parish, and has ever since enjoyed the same; that in the year 1686 she kept, from shearing time till *Allhollontide*, or *Christmas*, two hundred sheep, and as many more in 1687, and had near two hundred sheep shorn within the said parish in each of the said years, and had also two hundred sheep more shorn there in 1688, and kept the like number of sheep in each of the said years, from shearing time till *Allhollontide*, or longer, until they were fatted, and did then sell and dispose thereof, and delayed buying in any more sheep until after *Lady Day* in each of the said years, on purpose to defeat the plaintiff from receiving any tithe wool in kind for the same, and made great profit to herself by agistment of other sheep, and by letting out her winter commons to others, and by such and the like contrivances refused to pay any tithe wool in kind, or any other tithe, than only fourpence a month for each

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against
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each score of sheep depastured within the said parish between *Lady Day* and shearing time, which is usually only about three months in the year; whereas the said rate tithe of fourpence a score by the month ought to extend to the sheep brought into the said parish yearly after *Lady Day* by such parishioners only that kept winter stock of sheep therein; that the said defendant also kept on the said farm in the year 1687 ten cows, the tithes whereof, with the defendant's *Easter* offerings, amounted to sixteen shillings, which the defendant also refused to pay. The bill therefore prayed a discovery of the quantities and values of the tithes due to the plaintiff from the defendant, and also her late husband, for several years past, and a satisfaction for the same.

The defendant answered, and said, that the custom for paying tithes for sheep is, that for all sheep depastured within the said parish on *Candlemas Day*, and there shorn, tithe wool is due in kind to the rector; that if such sheep are taken out of the parish before *shear day*, yet the rector is to have the value of every tenth fleece paid to him by the owner, the rector repaying the owner fourpence a score for each month such sheep are taken away after *Candlemas Day*, and before *shear day* yearly; that for all sheep brought into the parish at any time after *Candlemas Day* yearly, and before the *shear day* following, whether shorn there or not, fourpence a score, and no more, is due from the owners for every month they are kept there, from *Candlemas Day* yearly, to *shear day* following, in lieu and full satisfaction of the tithe wool of such sheep, and that no tithe fleece ought to be paid in kind, whether the owners keep any winter stock or not; that she knew not of any other rate tithe for the depasturing of sheep within the said parish, or for the wool of such sheep, and believed there was no other, for that the parishioners keep their sheep there only for the improving their arable land, whereby the plaintiff's tithe corn is increased, and do not fat their sheep. She confessed, that for distinguishing what sheep were wintered in the parish, and what were brought in after *Candlemas Day*, there was anciently a general view or tale taken by the parson and the parishioners of the sheep there on *Candlemas Day*, but denied that there were anciently two views or tales, or any other view than as aforesaid. She also denied, that the rate tithe of fourpence a score a month, extended only to sheep brought into the parish after *Lady Day* or *May Day* yearly, and before shear time, and said that it likewise extended to the sheep that are brought in between *Candlemas* and *Lady Day*. She also denied that the parishioners are obliged to keep full winter stocks, or that, by any custom, they are obliged to buy in sheep but at their free will and pleasure. She said that her husband died in *August* 1686; that she possessed herself of his personal estate as administratrix, and had assets sufficient to pay the plaintiff's demand; that

The defendant's
answer.

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against
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that about *Lady Day* 1686 he bought in one hundred sheep, and soon after shearing them he died, for which she offered the plaintiff fourpence a score *per* month, but that he refused to accept the same. She said, that she believed that all other tithes due from her husband were paid to the plaintiff; that she disposed of the said sheep before the end of *November* following, but conceived no tithe was due from and after the sale thereof; that she kept no sheep till *Lady Day* 1687, and then she bought in one hundred and fifty, which she sheared, and offered to pay the plaintiff the rate tithe of fourpence; that before *Candlemas* 1687, she bought in seventy-eight sheep, and no more, which she sheared, and offered eight fleeces to the plaintiff, which he refused to accept of; that after *Candlemas Day* she bought in sixty-six, and kept the same till *shear day*, and sheared the same, and offered the plaintiff the rate tithe of fourpence, which he also refused; that she paid the plaintiff the tithe of her cows, except for the last year, when she kept ten cows, for which there is due by custom one shilling and sixpence for each cow, and for her *Easter* offering twopence. That she hath had fifteen dozen of pigeons, whereof, or of so many of them as she had sold, she computed the tithes to be three shillings. She said, that she was always ready to pay her said tithes and duties, and doth offer to pay the same, and denied that she refused to pay the same; and said that what sheep she sold were not fatted, but sold to the grazier.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

On the twenty-seventh day of *January* last the cause came on to be heard; and on reading the depositions of several witnesses, it appeared to the Court, that the rate tithe of fourpence a score *per* month, which the defendant doth by her answer insist upon to be the custom of the said parish, payable to the rector there in lieu and full satisfaction of tithe wool, extends only to the sheep bought in after *Candlemas Day*, and for so long time only as such sheep are kept in the said parish, between *Candlemas Day*, and *shearing day*, and extends not to the times such sheep are kept in the said parish from and after *shearing day* till the same are sold, which is a considerable part of the year; and for which the Court was of opinion, that tithes were due to the plaintiff for the herbage and feeding of the sheep.

It was therefore ordered and decreed, that the defendant should account with and satisfy the plaintiff for the said rate tithe of fourpence a score *per* month for all the sheep brought into the said parish, either by the defendant's late husband, or by her after *Candlemas Day*, and before *shearing day* in the said year, and for the value of the tithe herbage and depasturage of the same sheep, or of any other sheep kept and depastured by the
defendant

defendant from and after shearing time, and sold and disposed of before *Candlemas* following, for so long time as the same were fed and depastured, from shearing time till the same were sold in each of the said years; with moderate costs.

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against
WINSFIELD.

The defendant was likewise ordered to account for the tithes of pigeons for the said years, and of cows kept in 1687, and for her *Easter* offerings in the said years, and also for the value of eight fleeces of wool offered by her answer to be paid for the sheep she bought in before *Candlemas* 1687, and tendered and paid into the court two pounds, seventeen shillings, and sixpence, for the value of the said tithe, if the same should amount to so much. And it was referred to the deputy remembrancer to take the said account (a).

ROBT. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE]
JOHN TURTON.

(a) This decree was confirmed on P. C. 192. and *Colman v. Bunker*, a rehearing, and the decisions cited in the *Gillb. Rep. Eq. 231.* cases of *Easthead v. Sandys*, Show.

EDGERTON against FOLLETT and Another.

Devonshire, 20th February 1690.

HILARY TERM
2. WIL. & MAR.

THE plaintiff, as rector of the rectory and parish church of *Lymington*, in the county of *Devon*, demanded tithes of apples in kind.

A custom to pay 4d. a hoghead of cyder, in lieu of all tithe apples and other orchard fruit, is void in law.

The defendants insisted, that the tithe of apples ought not to be paid in kind, for that a *modus* of fourpence for every hoghead of cyder had been, for time beyond memory, paid to the rector there, in lieu of all orchard fruit growing within the parish.

THE COURT was of opinion, that the pretended *modus*, set forth in the answer, in discharge of orchard fruit not made to cyder, is a void custom in law.

BARKER against CLARKE.

Suffolk, 26th May 1690.

EASTER TERM
2. WIL. & MAR.

THE bill stated, that *A. Rouse*, deceased, was seised in his demesne as of fee of the manor of *Worlingworth*, in the county of *Suffolk*, and of the demesne lands belonging to the said manor, and of two parts in three of all the tithes of corn and

The demesne lands of the manor of *Worlingworth*, in the county of *Suffolk*, pay to the vicar said lands.

of *Worlingworth* the thirtieth stock of corn, in lieu of all tithes arising on the grain

BARKER
- against
CLARKE.

grain yearly growing on the said demesne lands, and of the advowson and rectory of *Worlingworth*, all which were granted to him and his heirs by HENRY THE EIGHTH; that the same, on the death of the said *A. Rouse*, descended to his son and heir, who afterwards conveyed the same to *J. Thurston*; and that after his death they came to his son, who conveyed the same to the plaintiff's father.

The defendant stated, that in the year 1685 he held, under the title of *J. Thurston*, forty-six acres of land, parcel of the demesne belonging to the manor of *Worlingworth*, and had that year about two acres of oats; that he set out the *thirtieth sheaf* for tithe to the parson as a *modus*, in satisfaction of all tithes thereof; and that the owners and occupiers of the demesne lands never paid any tithes to the lord of the manor.

Upon reading the proofs taken in the cause, and upon debate of the matters in question,

IT IS ORDERED BY THE COURT, that the said bill be, and the same is hereby dismissed.

ROBT ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOHN TURTON.

EASTER TERM,
2. WIL. & MAR.

ALCHORNE against GILBERT.

Suffex, 26th May 1690.

The custom of tithing wheat in the parish of *Eastbourne*, in the county of *Suffex*, is by setting out the *tenth heap*, and not the *tenth sheaf*.

THE plaintiff, as impropriator of *Eastbourne*, in the county of *Suffex*, claimed the tithes of wheat.

The defendant said, that he refused to tithe his wheat any otherwise than by *the sheaf*, which the plaintiff refused to accept.

The plaintiff replied, that the custom of tithing wheat was by the *tenth heap*, or fiveing, and not by the *tenth sheaf*.

THE COURT was fully satisfied that the custom of tithing wheat within the said parish is to set out *the tenth heap*, or fiveing, and not the *tenth sheaf*; and thereupon ordered and decreed that the defendant shall forthwith pay to the plaintiff forty shillings for the value of the tithe wheat detained by the defendant from the plaintiff, and shall also pay him five pounds costs.

ROBT. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOHN TURTON.

ALCOCK

ALCOCK *against* HILYARD and LE GRAND.EASTER TERM,
2, WIL. & MAR.*Lincolnshire, 22nd May 1690.*

THE bill stated, that *C. Westead*, being owner of the impropriate rectory of *Marsh Chapel*, in the county of *Lincoln*, and of all tithes any way due to the rector of the said rectory, demised all the said tithes to the plaintiff from *Lady Day 1683* to *Lady Day 1685*, at sixty pounds *per annum*, and that by virtue thereof he became entitled to the same.

Derelict lands reclaimed from the sea, and rendered arable, are subject to pay tithes.

The defendant said, that he is owner of several pieces of ground lying near and adjoining to the sea, which being embanked is become firm and dry ground, but which are esteemed *derelict lands*; that he ploughed part thereof, and sowed the same with rape seed and coleseed, and reaped the same; that no tithes were payable for the same, nor had any been demanded, before the rape seed was disposed of; and therefore he did not set out any tithe; and that if any tithe be due, the same is due to the vicar, and not to the impropriator.

IT IS ORDERED AND ADJUDGED, that the defendants shall account for and pay the tithes of the said lands to the plaintiff; and it is referred to the deputy remembrancer to take an account of the same,

ROBT. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOHN TURTON.

OSBORN, Bart. *against* BRECKON.TRIN. TERM,
2, WIL. & MAR.*Yorkshire, 18th July 1690.*

THE farmer of the rectory of *Pickering*, in the county of *York*, under the dean and chapter of *York*, claimed the great and small tithes of a piece of ground called *Wheeldale*, otherwise *Wheeldale Rigg*.

The lands called *Wheeldale Rigg*, in *Yorkshire*, are not within the rectory of *Pickering*, in the said county.

The question was, "Whether it was within the said rectory of *Pickering* or the titheable places thereof, or not?" and an issue was directed to try that fact; upon which the jury found that the said piece or parcel of ground called *Wheeldale*, otherwise *Wheeldale Rigg*, doth not lie within the rectory of *Pickering*, nor within the titheable places of the same.

THE COURT accordingly ordered, that the defendant shall be, and is hereby dismissed of and from the said bill and the matters and things therein contained.

ROBT. ATKYNS.
EDW. NEVILL.
NICH. LECHMERE.
JOHN TURTON.

STAYNES

TRIN. TERM,
2. WIL. & MAR.

STAINES *against* WELLS and Others

Essex, 10th July 1690.

A *modus* of one shilling for every calf under ten, and of fifteen cheefes every year, is payable by the parishioners of *Langdon Hill*, in the county of *Essex*, in lieu of the tithes of calves and milk.

THE plaintiff, as rector of the parish church of *Langdon Hill*, in the county of *Essex*, demanded tithes in kind of calves and milk.

The defendants insisted upon two *moduses*; the one of twelve pence for every calf under the number of ten yearly fallen to be paid to the rector at *Michaelmas*; the other of fifteen cheefes every year, each of which cheefes is to be made of the whole milk (except such as the calves suck from their several dams) proceeding or coming every tenth day, between the tenth day of *May* and *Michaelmas Day*, in full satisfaction of all tithe milk coming from all and every cow and cows fed and depastured within the said parish and titheable places thereof.

A trial at law upon two issues was directed, to try the validity of the said *moduses*; and on the said trial, after hearing much evidence on both sides, a verdict passed for the defendants.

THE COURT therefore ordered, that the said defendants shall be, and are hereby dismissed of and from the said bill, and the matters therein contained; but without costs on either side.

ROBT ATKYNS.

TRIN. TERM,
2. WIL. & MAR.

ATTORNEY GENERAL, at the Relation of SUTTON,
against OLDYS.

Surry, 7th July 1690.

The lands called *Byfleete Park*, which lie in the parish of *Wisley*, in the county of *Surry*, are tithe free, although they are now disparked, and converted into arable lands.

THE bill stated, that the king and queen and their progenitors had, time out of mind, been seised in fee of the manor of *Byfleete*, in the county of *Surry*, and of several *demesne lands* thereto belonging, whereof the lands called *the Park* are parcel; that the said lands, time out of mind, had been tithe free, and so enjoyed both by the king and his tenants, and that no manner of tithes had ever been demanded or paid for the same in the memory of man; that the defendant *Oldys*, pretending to be parson of *Wisley*, had brought several actions against the relator's tenants for tithes in kind of that part of the said land called *the Park*, that lyeth in *Wisley*; that the other defendant *Smart*, as rector of *Byfleete cum Wisley*, had filed his bill in this court for tithes of the same land, pretending it to be within the parish of *Byfleete*, and that *Wisley* is no parish of itself, but part of the parish of *Byfleete*. The bill therefore prayed,

prayed, that their majesty's tenants might be quieted till the matters should be settled.

ATTORNEY
GENERAL
against
OLDYS.

The defendant *Oldys* answered, that their majesties were seised of the manor of *Byfleete*, and of the *demesne lands* thereto belonging, in right of the crown; that the lands called *Byfleete Park* are part of the *demesne lands* of the said manor; that that part of *the Park* that lies in *Wisley*, whilst it continued a park and was stocked with deer, and afterwards, when it was converted into a warren, might possibly pay no tithes; but that it is now disparked, and the coneyes destroyed, and the land ploughed and sowed, and has been sowed for about three years past, and therefore the tithes are become due to him; and that he, as rector of *Wisley*, brought an action at law against the relators' tenants for the tithes arising out of that part of *the Park* as lyeth in *Wisley*, which is a parish of itself.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon debate of the matter, a trial at law was directed to be had at the bar of this court by a special jury of *Middlesex* upon this issue, "Whether that part of *the Park* called *Byfleete Park*, which lyeth in the parish of *Wisley*, is discharged of the payment of tithes, or not?"

A trial was accordingly had at the bar of this court; and upon full evidence, the jury found that that part of the park called *Byfleete Park*, which lieth in the parish of *Wisley*, is discharged from the payment of tithes.

IT IS THEREUPON FINALLY ORDERED, ADJUDGED. AND DECREED, that their majesties, and the said relator, and all persons claiming by, from, or under them, shall for ever hereafter have, hold, and enjoy that part of the park called *Byfleete Park*, that lieth in the parish of *Wisley*, in the county of *Surrey*, freed and discharged from the payment of any manner of tithes to the defendant *Oldys*, or any other claiming title thereto; to which purpose a *perpetual injunction* is to be awarded for the quieting their majesties and the said relator, their tenants and leasees, in the peaceable enjoyment thereof; but without costs on either side.

ROBT. ATKYNS.
EDWARD NEVILL.
NICH. LECHMERE.
JOHN TURTON.

KNIGHT *against* MAWE.

Lincolnshire, 18th July 1690.

TRIN. TERM,
2 WIL. & MAR.

THE scope of the bill was to have an account of a portion of tithes of corn and grain, hay, hemp, and flax, called *Saint Leonard's tithes*, which, at the time of the dissolution of *abbeys*, issuing out of certain lands in the parishes of *Eppworth* and *Haxey*, in the county of *Lincoln*.

The plaintiff claims a portion of tithes, called *Saint Leonard's* of *Lincoln*.

the

KNIGHT
against
MANE.

the late monastery or priory of monks of the *Carthusian order*, in the *Isle of Axholme*, in the county of *Lincoln*, the prior of the monastery or priory, for the time being, was and had been, time out of mind or otherwise, by some ancient grant, reservation, endowment, or composition in right of the monastery or priory, and as belonging to the house, scite, precinct, or church of and within the same, entitled to, and had, from time to time, received and enjoyed, and were issuing out of certain lands lying in the parishes of *Epworth* and *Haxey*, in the said county, in the possession of the said defendants; which said portion of tithes were due and ought to be paid over and above the tithes due to the rectors of the said parishes.

The defendants deny, that the lands have paid tithes time out of mind, and state, that they being *copyhold* lands cannot be rendered liable by prescription, and that the origin of the title to the tithes ought to be shown.

The defendants denied, that at or before the dissolution of the said priory or monastery, the prior *pro tempore* was or had been, time out of mind or otherwise, by any legal grant, endowment, or composition, lawfully entitled to the said tithes; and insisted that the lands, out of which the plaintiffs demanded the tithes, being copyhold lands, held of the manor of *Epworth*, by copy of court roll, ought not to be charged with the tithes; that in case the prior *pro tempore* did receive the said tithes, it was incumbent on the plaintiff to shew how he came to do it, and what endowment, grant, or other thing he had which might, in law, charge the said lands, the said lands being copyhold, and nothing thereof to be found in the court rolls; and therefore they conceived that the said lands could not be charged with such an unusual burden, except by some surrender from some former owners of the said lands, according to the custom of the said manor, and enrolled and entered in the court rolls of the said manor; and that, in case the said lands be charged with the said tithes, and considering the great charge of tillage, fallowing, manuring, seed cutting, lord's rents, taxes, and other charges, they conceived the lands were not worth tilling, but must lie uncultivated; and therefore hoped the Court would not decree the payment of the said tithes till the plaintiffs proved by good evidence how the lands were originally charged, and what legal endowment, grant, or other thing the prior had thereof, and from whom.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the several depositions taken in the cause, and a deed, dated the twenty-seventh of *April* 1652, made between *Sir P. Tyrwhitt* and *J. Dillingham*, and on debate of the matter,

A trial at law directed on an issue, whether they are tithe free.

THE COURT directed a *trial at law* in an action of trover and conversion, to be brought by the defendants against the plaintiffs: in which action, the plaintiffs in this cause are to admit that the defendants set out a stack of corn and a cock of hay for tithes over and above the tithes due to the parson, and also that

that the plaintiffs carried the same away, and converted the same to their own use; and the only question upon the trial to be, "Whether the plaintiffs are entitled to the said portion of tithes, called *Saint Leonard's tithes*, lying in the parishes of *Epsworth* and *Haxey*, or not?"

Knight
against
Mawe.

A trial was accordingly had; and a verdict was found for the defendants in the action (who are plaintiffs in this suit).

This cause, and also a cross cause, wherein the defendants in this cause were plaintiffs, and the plaintiffs defendants, came on the twenty-ninth day of *June* 1692 to be heard; and upon reading the *posse* of the verdict, and after a *new trial* being prayed for, and on debate,

IT IS ORDERED AND DECREED, that the defendants shall satisfy and pay to the plaintiffs the tithes due for the lands they severally hold in the said parishes of *Epsworth* and *Haxey*, or the value of the same; and it is referred to the deputy remembrancer to take the account.

The defendants
ordered to pay
the tithes.

And as to *the cross bill*, it being for the same matters, it is ordered to be dismissed with costs to be taxed.

ROBT. ATKYNS.
NICH. LECHMER.
JOHN TURTON.
JOHN POWELL.

DODDERIDGE *against* STARTOP.

Suffex, 10th July 1690.

TRIN. TERM,
2. WIL. & MAR.

THE plaintiff claims tithes of the rectory of *Wharlington*, in the county of *Suffex*.

The parishioners
of *Wharlington*,
in *Suffex*, pay a
modus of 2s. in
the pound in lieu
of tithes.

The defendants state a custom of paying two shillings in the pound, according to the yearly value of their farms, by half yearly payments, at *Lady Day* and *Michaelmas*, in full satisfaction of all tithes whatsoever.

On reading the depositions of divers witnesses in the cause, and on full debate of the matter, THE COURT ordered the bill to be dismissed without costs.

CLAXTON *against* LANGTON.

Lincolnshire, 24th November 1690.

MICH. TERM.
2. WIL. & MAR.

THE bill stated, that the plaintiff, for one year last past, had been rector of *Mablethorpe Saint Mary's cum Stayne*, in the county of *Lincoln*, and entitled to all manner of tithes *in kind*, and to the glebe lands thereunto belonging.

A custom that
out-dwellers, oc-
cupying ancient
pasture in a pa-
rish, shall pay 4d.
an acre yearly,
custom.

on the first of *August*, in lieu of tithes, is a good

The

CLAXTON
against
LANGTON.

The defendant stated, that within the parish there is a custom that if any person, dwelling out of the parish, occupies or takes to farm any pasture ground, being *ancient pasture ground*, lying in the said parish, he shall pay to the rector of *Mablethorpe* the yearly sum of fourpence an acre for every acre of such pasture ground, in full of all tithes yearly arising upon every such respective acre, the same to be paid upon every first day of *August*, or afterwards, upon request, and that the same sum of fourpence an acre, amounting to four pounds, fourteen shillings, and sixpence, was tendered to be paid accordingly, but that the plaintiff refused the same, and that the defendant was and is ready to pay it.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

The plaintiff's counsel confessed that the custom was fully proved, but denied that the defendant had proved any more than one pound, fourteen shillings, and fourpence to be tendered, which was not the full customary payment; and insisted that the custom being formerly in issue, in the cause of *Asbfordby*, clerk (the plaintiff's predecessor), against *Newcomen*, gentleman (*a*), was decreed to be a void custom, and against law, and therefore prayed the like decree might be made in this cause, and that such former decree was the only inducement why the plaintiff brought this suit.

The defendant's counsel insisted, that since the said decree the like custom being in question once or twice in this court, was decreed to be a good custom (*b*).

Whereupon, and upon hearing what was alledged by the counsel on both sides,

THE COURT declared, that the custom insisted on by the defendant in his answer, was a good custom.

IT IS THEREUPON ORDERED AND ADJUDGED, that the defendant shall be, and is hereby absolutely dismissed this Court of and from the bill, and the matters and things therein contained, with costs to be taxed by the deputy remembrancer.

THE COURT FULL.

(a) See ante page 166.

(b) See ante page 166. 183. 207.

HILARY TERM
2. WIL. & MAR.

SANDYS against PIGOTT.

Somersetshire, 29th January 1690.

The archdeacon of *Wells*, in *Somersetshire*, is entitled to certain *paschals* and *procurations* from the several rectors and vicars within the said archdeaconry.

THE bill stated, that the plaintiff, for six years past, had been archdeacon of the archdeaconry of *Wells*, in the county of *Somerset*, and was entitled to several ecclesiastical dues, called *paschals* and *procurations*, from the several parsons and vicars within the said archdeaconry for their respective parsonages and vicarages; that there became due to the plaintiff from the defendant, as vicar of *Philips Norton*, with the chapel of *Hinton*

Hinton thereto annexed, within the said archdeaconry, for three years, for *procurations* for *Philips Norton*, at seven shillings and fivepence halfpenny a-year, one pound, two shillings, and fourpence halfpenny; for *paschals* for the same, at two shillings and threepence a-year, six shillings and ninepence; and for the chapel of *Hinton*, for *procurations* for the said three years, at seven shillings and fivepence halfpenny a-year, one pound, two shillings, and fourpence halfpenny; and for *paschals* for the said chapel, at three shillings and threepence a-year, nine shillings and ninepence.

SANDYS
against
PIGOTT.

The defendant insisted, that there was only due from him to the plaintiff nine shillings and eightpence halfpenny a-year, and no more, for all manner of ecclesiastical duties whatsoever payable out of the said vicarage, as appeared by a record of this court in the remembrancer's office of the first fruits, being the return of a commission under the great seal of *England*, in the thirty-sixth year of *Henry the Eighth*, directed to commissioners to enquire of the annual value of ecclesiastical benefices, and of the deductions thereout issuing, pursuant to an act of parliament in that case made and provided.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon debate thereof, and reading divers ancient books of the former archdeacons of the said archdeaconry, which evinced the payment of the respective duties demanded by the plaintiff, and upon reading the said record of the first fruits, and the proofs taken in the cause, and upon mature deliberation had of the matters aforesaid,

IT IS ORDERED AND DECREED, that the defendant do pay to the plaintiff the said several and respective duties called *procurations* and *paschals* for the said years, amounting to three pounds, one shilling, and threepence, with his costs, unless the defendant shews better cause.

Upon hearing counsel again on the fifth of *February* 1690, this Court doth ratify and confirm the said decree;

AND DOTH FURTHER ORDER AND DECREE, that the said defendant, for the future, so long as he continues vicar of the said vicarage, and the plaintiff archdeacon of the said archdeaconry, do pay to the plaintiff his *procurations* and *paschals* pursuant to the said former decree.

THE COURT FULL.

TANGRED against FEWSDALE.

Yorkshire, 9th *February* 1690.

HILARY TERM
2. WIL. & MAR.

THE bill stated, that for seventy years past the plaintiff and his ancestors have been seised in fee of and in the rectory and parsonage impropriate of *Whixley*, otherwise *Wikesley*, claims tithes in kind of a farm called

The impropriator of the rectory of *Whixley*, in *Yorkshire*, *Gateskill*,
in

TANCRED
against
FEWDALE.

in the county of *York*, and of the advowson and right of patronage of the parish church of *Whixley*, and entitled to all manner of tithes, both great and small whatsoever, yearly happening, &c. and to all oblations, obventions, and other church duties whatsoever to the said parsonage belonging.

The defendant
sets up a *modus*
of 5*l.* a year in
lieu of tithes.

The defendant said, that *Sir Thomas Mauleverer, Bart.* was seised, at his death, in fee of the messuage called *Gatehill*, with the appurtenances of several closes lying within the several parishes of *Allerton*, *Mauleverer*, and *Whixley*, and having made a lease, and being seised of the reversion and inheritance of the said premises, expectant upon the determination of the said lease, he died in *August* 1687; that after his decease *Sir Richard Mauleverer*, his brother and heir, became seised thereof, who died in *May* 1689, and the premises descended to *Sir Richard*, his son and heir, who is now seised of the said farms; that the said *Sir Thomas*, by indenture of lease dated the twenty-ninth of *March* 1681, demised the aforesaid messuage and premises to him, the defendant, for twenty-one years from *Lady Day* then last past; and by virtue thereof he hath been possessed of the said premises ever since, and was likewise tenant of the premises to the said *Sir Thomas* for ten years before making such indenture; that the lands called *Gatehill* do lie within the rectory, but that the closes called *Wormball Horse Close*, and *the Garths*, or *Cow Close*, or the greater part thereof, do lie in the parish of *Allerton Mauleverer*, and not in the rectory of *Whixley*, and are no parcel of *Gatehill* grounds, fields, or farm, unless some very small part of the said *Garths*; that during the time whereof the memory of man is not to the contrary, the said family of the *Mauleverers* had used to pay by themselves, or their tenants of *Gatehill* farm, to the rector of *Whixley*, at the feast of *Saint Mark the Evangelist* yearly, or afterwards upon demand, five shillings in lieu of all manner of tithes whatsoever growing, renewing, coming, or yearly happening within or upon *Gatehill* farm, or any part or parcel thereof.

An issue directed
to try the *modus*,
and a verdict
found for the

The Court directed an issue to try the *modus*; and on full evidence, a verdict was given for the defendant.

The defendant
dismissed.

THE COURT therefore ordered, that the said defendant be dismissed of and from the said bill, and the matters and things therein contained; with costs.

EDWARD NEVILL.
NICHOL s LECHMERE.
JOHN TURTON.

BIRCHI SHAW

BIRCHINSHAW against WILCOCK and Others.

Devonshire, 12th November 1691.

MICH. TERM,
3. WIL. & MAR.

THE plaintiff, as rector of *Lydford*, in the county of *Devon*, exhibited his bill, stating that his predecessors, time out of mind, or by some ancient grant, were entitled to all manner of predial and other tithes within the said parish and the titheable places thereof.

The rector of *Lydford*, in *Devonshire*, claims tithes of lands lying in the forest of *Dartmoor*.

The defendants alledged, that the grounds by them severally held do lie within the forest of *Dartmoor*; that the said forest was an ancient forest, park, or chace, belonging to THE CROWN; that the tithes thereof, and of all allotted and improved grounds therein, were only payable to THE CROWN, and by law no tithes, or any thing in lieu thereof, could be claimed by any person for the same, but only by such as claimed by matter of record under the crown.

The defendants alledge that the tithes belong to the crown, and can only be claimed by matter of record.

The defendants' counsel insisted, that the grounds out of which the plaintiff demands tithes, are not within the parish of *Lydford*, or the titheable places thereof.

THE COURT directed the plaintiff to bring an action against the defendants; the issue to be, "Whether the tenements and lands in the occupation of the defendants, out of which the plaintiff demands tithes, do lie within the parish of *Lydford*, or the titheable places thereof, or not?" to be tried by a special jury.

An issue directed to try whether the lands lie in the parish of *Lydford*.

A trial was accordingly had by a special jury out of the north grand division of the said county, and a verdict given for the plaintiff.

A verdict found for the plaintiff.

The defendants' counsel prayed a new trial; but THE COURT, seeing no miscarriage in the jury upon the last trial, nor any just exception to the verdict, refused to grant any further trial.

A new trial refused.

IT IS THEREFORE ORDERED BY THE COURT, that the defendants shall respectively account with and satisfy the plaintiff for all such tithes as they have severally had in the years 1688 and 1689 (a).

Tithes in kind decreed.

NICH. LECHMER.
JOHN TURTON.
JOHN POWELL.

(a) See the case of *Burnsford v Turrett*, post. Hilary Term, 3. Anne.

DEEDS against LEWIS and Others.

Pembrokesbire, 13th February 1691.

HILARY TERM
3. WIL. & MAR.

THE rector of *Saint Dogmells*, in the county of *Pembrokeshire*, claims all tithes, both great and small, yearly arising within the parish and the titheable places thereof.

The rector of *Saint Dogmells*, in *Pembrokesbire*, claims tithes of lands in kind.

The

DEEDS
against
LEWIS
AND OTHERS.
The defendants
plead, that the
lands in question
were parcel of
the abbey of St.
Dogmells, and
discharged of
tithes;

The defendants said, that part of their lands was parcel of the possessions of the late dissolved abbey of *Saint Dogmells*, and enjoyed by the abbots thereof, and within the gate or wall of the abbey, and always in their own manurance; that some part of their lands, which lay out of the close, wall, or precinct of the abbey of *Saint Dogmells*, doth lie within the said rectory, and that the tithes have been constantly paid for the same, but that the other parts of the lands lay within the scite, wall, close, or precinct of the said abbey, and for such part thereof no manner of tithes, or any thing in lieu thereof, were ever paid or demanded, but have always been exempted or discharged from tithes, either by real composition or by some usage, law, custom, prescription, or by some other ways or means.

but it appearing
that *St. Dogmells*
was one of the
lesser abbeyes,

But it appearing that the said abbey was one of the *lesser abbeyes*, and was dissolved by the statute 27. *Hen. 8. c. 28.*

THE COURT was therefore of opinion, that though it did not appear that the said lands had for many years past paid any tithes, yet that the said lands ought, and are by law liable to the payment of tithes to the said plaintiff as impropiator of the said parish of *Saint Dogmells*.

the payment of
the tithes are
decreed.

IT IS THEREUPON ORDERED AND DECREED BY THE COURT; that the defendants do severally pay to the plaintiff the value of their tithes arising upon the said lands lying within the scite, close, wall, or precinct of the said abbey, for the respective times and values in their said answers set forth, the said plaintiff being willing to accept the same at those values.

HILARY TERM
3 WIL.& MAR.

EDGE against OGLANDER and Others.

Suffex, 4th February 1691.

The lands call-
ed *Kingsham*
Farm, in the
county of *Suffex*,
pay a *modus* of
8l. on *Michaelmas*
Day yearly to the
rector of *St.*
Pancras, in the
said county, in
lieu of all tithes.
S. C. Rayn. 71.
S. C. Bunb. 301.

THE bill stated, that the plaintiff, since *June 1685*, had been the lawful rector of the rectory of *Saint Pancras*, in the county of *Suffex*, and entitled to all tithes, both great and small, belonging thereto.

The defendants denied the plaintiff's title, and believed a *Mr. Richards* to be the lawful rector, but confessed that *Oglander* was owner, and the other defendants occupiers of a farm called *Kingsham Farm*, at eight pounds a-year; and insisted that no tithes in kind ought to be paid for the same, there being time out of mind, the sum of eight pounds as a *modus* used and accustomed to be paid yearly at the feast of *Saint Michael* to the rectors for the time being, in lieu and full satisfaction of all tithes arising on the said farm, and no other sum whatsoever.

The

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and on reading the depositions, and on full debate,

EDGE
against
OGLANDER
AND OTHERS.

IT IS ORDERED AND DECREED, by the consent of the plaintiff, that the defendants shall, before *Easter* next, satisfy and pay to the plaintiff, or his order, forty-eight pounds, being for six years ending at *Michaelmas* 1690, for the said *modus* of eight pounds a-year for the said *Kingsbam Farm*, together with five pounds costs ; but in default as aforesaid, then the deputy remembrancer is hereby ordered to tax costs, to be paid by the said defendants to the said plaintiff.

LECHMERE, *Baron*.
TURTON, *Baron*.
POWELL, *Baron*.

CRESSNER *against* GALLY and Others.

Cambridgeshire, 21st June 1692.

TRIN. TERM,
4. WIL & MAR.

THE vicar of *Soham*, in the county of *Cambridge*, claims all small tithes in kind in a marsh ground called *Soham Meere*.

The marsh called *Soham Meere*, in *Cambridgeshire*, pays a *modus* of 13s. 4d. yearly to the impropriator of *Soham*, in lieu of tithes.

The defendant stated, that the vicar of *Soham* had never had right to any tithes of *hay* arising from the said meere called *Soham Meere* ; for that, time out of mind, there hath been yearly paid to the impropriator of the said parish of *Soham* thirteen shillings and fourpence, in lieu and full satisfaction of all tithes whatsoever, arising or happening of and from the said meere.

A trial at law was directed ; the issue to be, “ Whether the sum of thirteen shillings and fourpence, payable yearly to the impropriator of the said parish of *Soham*, be in lieu and full satisfaction of all the small tithes, as well as great tithes of the said meere, called *Soham Meere*, or not ? ” Upon which trial the jury gave a verdict for the defendants.

The cause now came on to be heard on the said verdict, and the plaintiff’s counsel prayed *a new trial*, and MR. BARON TURTON having spoke with THE JUDGE who tried the same, and he declaring that he thought the matter proper for a new trial, the Court ordered a new trial to be had upon the former issue by a special jury, and that the plaintiff shall pay to the defendants costs to be taxed for the last trial.

The cause was again tried at the last assizes, and a verdict was again given for the defendants ; that time out of mind the sum of thirteen shillings and fourpence hath been paid to the impropriator of *Soham*, in lieu and satisfaction of all tithes arising on the meere called *Soham Meere*.

15th May 1693.

CRESSNER
against
GALLY
AND OTHERS.

The cause, being continued in the paper of causes, came on again this day to be heard on the verdict, when upon reading both the aforesaid orders, and the *postea* of the said verdict, the plaintiff's counsel prayed a new trial, but the Court, having formerly granted two trials, did not think proper to grant any more trials.

IT IS THEREFORE ORDERED AND ADJUDGED BY THE COURT, that the defendants be dismissed of and from the said bill, and the matters and things therein contained, with moderate costs.

ROB. ATKYNS.
NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

TRIN. TERM,
4. WIL. & MAR.

SHEPHARD *against* BIRKETT and Others.

Westmoreland, 16th June 1692.

The lessee of the tithes of Kendal, in *Westmoreland*, demands a customary payment called *tithe meal silver*.

THE bill stated, that for fourteen years last past, the plaintiffs had been farmers of the rectory of *Kendal*, in the county of *Westmoreland*, by lease made by Sir J. Otway; that the defendants have been occupiers of several arable and other lands for one year last past, and ought to have paid to the plaintiffs, in lieu of the tithes of corn, several sums of money, as compositions for the same, viz. the defendant *Birkett*, one shilling and fivepence; the defendant *Steddall*, tenpence; and the defendant *Barwick*, nine shillings and ninepence; which sums they severally refused to pay.

The defendants say the plaintiffs lease expired at *Lady Day*, and the demand is not due till *Easter*.

The defendants confessed, that the plaintiffs were farmers of the rectory, and that for the year 1690 they had severally been occupiers of several arable lands therein; that the several sums of money, in the bill demanded, were yearly due and payable as a composition in lieu of tithes, and is called *tithe meal silver*; that the said composition money is, by the custom of the said rectory, payable at *Easter*, and therefore not due to the plaintiffs, their lease determining at *Lady Day* 1691, which was about three weeks before *Easter Day*, and that the same was due to the farmers of the said rectory, and had been demanded by them.

It fully appearing that the money was due and payable at the feast of *Easter* yearly,

The bill dismissed.

THE COURT was of opinion, that the said composition demanded by the bill was not due to the plaintiffs, being payable after the determination of the lease.

IT

IT IS THEREUPON ORDERED, that the said defendants are dismissed of and from the said bill with costs to be taxed (a).

SHEPARD
against
BIRKETT
AND OTHERS.

ROB. ATKYNS.
NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

(a) The tithes of this parish were leased from *Lady Day* 1691, to one *John Lambert* who, on the sixteenth of *June* 1692, filed his bill against *Thornborough* and other parishioners, for the payment of the *tithe meal*, *silver*, which became due at *Easter* 1691.

The defendants pleaded that it was due to the lessees of the tithes for the year 1690, but the Court ordered the money to be paid to the plaintiff *Lambert*, it being in lieu of the tithes of the subsequent crop.

WALMER against STANFORD and Others.

TRIN. TERM,
4 WIL. & MAR.

Worcestershire, 23d *June* 1692.

THE plaintiff, as rector of *Great Comberton*, in the county of *Worcester*, stated, that he was lawfully instituted to all sorts of tithes whatsoever arising, &c. within the said rectory and the limits, precincts, and titheable places thereof, and also to a right of common on *Comberton Hill*.

The rector of *Great Comberton*, in *Worcestershire*, claims the tithes of the parish, and a right of common on *Comberton Hill*.

The defendants appeared and confessed, that the tithe of hay and all small tithes were due to the plaintiff, and that they had paid the same to him for all the time he had been rector there, but they denied that the tithes of corn and grain are due to him, or that his predecessors ever had or received the same, or that he hath any right of common on *Comberton Hill*.

The defendants confess his right to small tithes, but deny it to great tithes, and to the right of common.

The defendant *Dorothy Hanford* said, that by virtue of some grant or legal prescription, her husband and his ancestors had taken and collected, in their own right, a portion of all the *great tithes* of corn and grain within the said rectory and parish, and that she and her farmers have, since his death, yearly received the said portion, and that the other portion of the great tithes belongs to the dean and chapter of *Westminster*, or their lessee, who have also constantly enjoyed the same.

The defendant *Hanford* says, that a portion of the great tithes belong to her, and the residue to the dean and chapter of *Westminster*.

The defendants set forth the quantities and values of their tithes, and said, that *Comberton Hill* is in the manor of *Woolalshall*, and not in the parish of *Great Comberton*, and so no tithes of herbage are due to the plaintiff from *Comberton Hill*.

The defendants say *Comberton Hill* is not the parish.

The defendant *Cole* said that he rented of the defendant *D. Hanford* a farm called *Westmon's Farm*, together with a portion of tithes called *Hanford's Tithes*, and that the plaintiff one year seized some sheaves of corn that were set out by some of the occupiers, and claimed the same as rector.

The defendant *Cole* says he occupies *Westmon's Farm*.

WALMER
against
HANFORD
AND OTHERS.

The defendants
refuse to try
whether the Hill
is in the parish.

Decreed to ac-
count for the
small tithe of Com-
berton Hill.

The bill dismiss-
ed as to the rec-
tor's right of com-
mon.

And issue di-
rected to try the
rector's right to
the great tithes.

Verdict for the
defendant Han-
ford.

15th July 1693.

Report confirm-
ed, except as to
4d. for garden.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides.

On reading several depositions taken in the cause, and on long debate of the matter, the defendants refusing to try at law, whether *Comberton Hill* be within the said parish of *Great Comberton*, or not, and submitting to account for the small tithes arising thereon, and other premises and places in their possessions ;

IT IS ORDERED AND DECREED, that the defendants shall severally account for and pay to the plaintiff their several small tithes and tithes of hay and herbage, which have grown due and arisen upon *Comberton Hill* aforesaid, and on other the several and respective lands and premises in their several possessions, being within the said parish of *Great Comberton*, and the titheable places thereof ; and it is referred to the deputy remembrancer to take the said account.

And THE COURT not being satisfied by the proofs in the cause, that the plaintiff hath any right to have common of pasture upon *Comberton Hill*, it is ordered, that the said bill, as touching the common of pasture on *Comberton Hill*, shall be, and is hereby dismissed.

And as touching the tithes of corn and grain arising within the said parish of *Great Comberton*, it is ordered by the Court, that it be referred to a trial at law, upon this issue, “ Whether
“ the plaintiff, as rector of the parish aforesaid, be entitled,
“ in right of his said rectory, to the tithes of corn and grain
“ within the said parish of *Great Comberton* and the titheable
“ places thereof, or to any and what part of the said tithes, or
“ not ? ”

In pursuance of the above order, a commission issued to examine witnesses touching the said account, and the deputy made his report, dated the eleventh day of July instant.

And in further pursuance of the said order a trial was had of the said issue, touching the tithes of corn and grain, wherein a verdict passed for the defendants the *Hanfords*.

The cause came on upon the equity reserved ; and upon reading the said decree and report, with an exception taken by the defendant *D. Hanford*, touching the fourpence charged upon her by the said report, for her garden and *Easter* dues, and also reading the *possea* ;

IT IS ORDERED AND DECREED, that the said report shall be, and is hereby ratified and confirmed in every particular, saving the fourpence reported to be due from the defendant *D. Hanford*, to which she had taken an exception which is hereby allowed, and she is hereby dismissed of and from the said bill with costs.

AND

AND IT IS ORDERED, that the defendants *Fort* and *Sole* shall forthwith, upon sight of this order, or a true copy thereof, pay to the plaintiff or his assignee two pounds, eight shillings, so reported to be due from them to the plaintiff for tithe herbage of ground called *Comberton Hill*.

And IT IS ORDERED, that the defendant *Drinkwater* pay to the said plaintiff thirteen shillings, for his small tithes.

And also that the defendant *C. Hunford* shall pay the one pound, four shillings, so reported due from him, together with moderate costs to be taxed.

AND IT IS FURTHER ORDERED AND ADJUDGED, that the said bill, as touching the tithe of corn and grain, be and is hereby absolutely dismissed.

WATMER
against
HANFORD
AND OTHERS.
Defendants *Fort*
and *Sole* to pay
tithe herbage of
Comberton Hill.
Drinkwater to
pay his small
tithes.

Bill dismissed as
to great tithes.

LISTER against CANE and SALMON.

Buckinghamshire, 22d June 1692.

TRIN. TERM^o
4. WIL. & MAR.

THE plaintiff, as rector of *Fulmore*, in the county of *Bucks*, stated, that according to a law, or custom used within the said parish, and the adjacent parishes there, the tithe of underwood, when felled, ought to be set forth in loads, half loads, quarterns, stacks, and bundles, viz. firewood in loads, half loads, quarterns, and stacks; and hoops, withes, broom staves, hurdle rods, and other such like wood in bundles, to be made up and bound with withes, and set forth equally in the same method and manner, as the owner and proprietor of such woods, when felled, sets it forth and prepares it for his own use or sale. And that by custom *rabbits* had always paid tithes to the rectors within the said parish. That the defendant *Cane*, between *Midsummer* 1687 and *Michaelmas* 1690, had felled great quantities of underwood, and sold the same, and had also cows and calves, for which he paid no tithes to the plaintiff; that the defendant *Salmon*, for four years past, held and occupied a warren, and killed, sold, and disposed of great quantities of rabbits, without paying the tithes thereof, or making any satisfaction for the same.

The rector of
Fulmore, in the
county of *Bucks*,
demands tithes
of wood to be set
out in loads, &c.

and the tithes of
rabbits.

The defendant *Cane* confessed, that he had felled, sold, and disposed of twenty-six acres of underwood worth fifty shillings an acre; that he had also cows and calves; and mentioned, that by an ancient custom there used, fourpence *per annum* had been paid to the rector for a cow, and therefore no tithe ought to be paid for milk or calves. He confessed, that he had set forth the tithe of the wood by single stick, or stick meal, as by the law he might do, and that the same was a full tenth part of the wood felled by him, and that the plaintiff was contented there-

The defendant
says he set out
his wood by sin-
gle stick, or stick
meal.

LISTER
against
CANE AND
SALMON.

with. He denied, that there was any custom to set forth tithes wood in loads, half loads, &c. as stated in the bill, but that to oblige the plaintiff he had, in some of the years mentioned, caused his wood to be set out in quarters.

Denies that rabbits are titheable.

The defendant *Salmon* confessed, that for four years he had occupied and possessed a warren in *Fulmore*, and paid for the warren house and the warren, and killed within the said warren about sixteen dozen of rabbits, which he sold for eight shillings a dozen, and said that he had let the plaintiff have several couple of conies, but not as tithes; and he denied that there is any custom for tithing the same.

Upon reading the proofs taken in the cause, and on debate,

The wood decreed to be set out in loads, &c.

THE COURT was of opinion, that the method, insisted upon by the defendant *Cane* for the setting forth of the tithe of his wood, is irregular and illegal, as being an unequal and fraudulent way of tithing wood, AND THEREFORE ORDERED AND DECREED, that he shall pay and satisfy the plaintiff six pounds for the value of his tithes of wood, calves, and milk, viz. five pounds, fifteen shillings, for the wood; three shillings for his calves; and two shillings for his wool; AND THAT the defendant *Salmon* shall pay to the plaintiff forty shillings for his tithes of rabbits for the said years; and the deputy remembrancer is to tax the plaintiff his costs.

The tithe of rabbits decreed.

TRIN. TERM,
4 WIL. & MAR.

STUMP against AYLIFE.

Wiltshire, 21st June 1692.

The rector of *Foxley*, in *Wiltshire*, claims the tithes arising in the said parish.

THE plaintiff, as rector of the parish of *Foxley*, in the county of *Wilts*, stated, that he was entitled, as rector, to all dues and tithes whatsoever arising within the parish and the titheable places thereof.

The defendant pleads the statute 1. Hen. 8. c. 13. f. 2. and says the plaintiff accepted of a second benefice in *Sutton Bengier*, and therefore is not entitled to the tithes in *Foxley*.
Dyer, 237.

The defendant pleaded, that by the statute 21. Hen. 8. c. 13. f. 9. intitled, "Spiritual Persons abridged from having Plurality of Livings," IT IS ENACTED, "that if any person, having one benefice with the cure of souls of the yearly value of eight pounds or above, accept of any other and be in possession, that then immediately after such possession had, the first benefice shall be void." That the rectory of *Foxley* is a benefice with the cure of souls, and above the value of eight pounds *per annum*, viz. of sixty pounds *per annum*, and upwards; that, about the second of *August* 1689, the plaintiff accepted of a second benefice, to wit, the vicarage of *Sutton Bengier*, in the said county, being a benefice with the cure of souls, and was inducted and in possession thereof, without any qualification according to the statute, and therefore the first benefice was void, and the plaintiff had no right to any tithes.

tithes of *Foxley*, save such as were due to him before his induction into the second benefice ; that for that reason he refused to pay the plaintiff any tithes other than what were payable to the plaintiff before his induction into the benefice of *Sutton Benger* ; that he is willing to pay what is due to the plaintiff, and if the Court is against him, prayed that the same might be added to his account.

STUMP
against
AYLIFF.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading the proofs in the cause, and full debate of the matter in law, arising in the pleadings, touching the plaintiff's accepting a second benefice, and other matters insisted upon by the defendant's counsel, IT IS ORDERED BY THE COURT, that this cause be further heard touching the said matter in law.

The case adjourned to consider of the point of law.

THE COURT, on the fifth of *December* 1692, after hearing counsel touching the said matter in law, unanimously declared, that the defendant ought to account for and pay to the plaintiff the said tithes and dues demanded by the bill (a).

The defendant ordered to pay his tithes,

(a) It seems from the report of this case, from the manuscript the lord chief baron, Dodd. Rayner, 72, that the Court determined in favour of the plaintiff, because, though the real value of the rectory of *Foxley*, was above eight pounds a-year, yet in the king's books, (which is the conclusive rule) it is under that

value; and the same point was determined in the case of *Jones*, on the demise of *Rascaud*, v. *Sambre*. 17. Vin. Abr. 362. See also the case of *Sharp* v. *French*, 2. Lutw. 1305. *Bond* v. *Tucket*, Cro. Eliz. 153. *Woolforston* v. *The Bishop of Lincoln*, 2. Wil. 195. S. C. 3. Burr. 1508.

BERWICK against SWANTON.

TRIN. TERM,
4. WIL. & MAR.

Norfolk, 22d June 1692.

THE plaintiff, as vicar of *Tofts*, otherwise called *West Tofts*, in the county of *Norfolk*, and sequestrator of the vicarage or parish church of *Stanford*, stated, that by his institution and induction into the said parish church of *Tofts*, and by virtue of the sequestration to him granted, of the vicarage of *Stanford*, two years before he filed his bill, he became entitled to all manner of small tithes and vicarial offerings.

The Court of exchequer will not retain a bill filed by a sequestrator, to be relieved for non-payment of vicarial tithes.

The defendant appeared and answered ; the plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides.

S. C. Rayn. 72.
S. C. Bunb. 192.

The matter in difference between the plaintiff and the defendant appearing to be only touching the tithes within the parish of *Stanford*.

THE COURT was of opinion, that the plaintiff, being only sequestrator of the said parish, was not properly relievable in this

BERWICK
against
SWANTON.

court, touching the tithes arising within the said parish, and therefore ordered the bill to be dismissed; but without costs.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

TRIN. TERM,
4. WIL & MAN.

WATTS against WATKINS and Others.

Herefordshire, 22d June 1692.

The rector of
Doore, in *Here-*
fordshire, claims
the tithes of
Morehampton
Grange.

The defendants
say, that *the*
Grange was
parcel of the
possession of the
abbot of *Doore*
of the *Cistercian*
order, and came
discharged of
tithes to *Henry*
the Eighth, who
granted them to
T. Baskervill,
under whom the
defendant claims
it, so discharged
of tithes.

THE bill stated, that the plaintiff was, in the year 1676, presented to the rectory of *Doore*, in the county of *Hereford*, and was thereby entitled to all tithes arising within the said parish.

The defendants said, that, since the plaintiff has been rector of the said parish, they have severally held messuages, farms, and lands within the grange called *Morehampton Grange*, within the said parish; and insisted, that they ought not to pay any tithes for the same, for that the abbot or prior of the abbey of *Doore* was of the *Cistercian order*, and privileged from the payment of tithes, and was heretofore seised in fee of divers lands, parcel of the demesnes of the said abbey, within the said parish of *Doore*, and amongst others of the said grange called *Morehampton Grange*, which was parcel of the said abbey, and that the lands in the defendants possession were parcel thereof; that the said abbot was also possessed of the appropriate rectory of *Doore*, and, being so seised, in the twentieth year of *Henry the Eighth*, demised the said grange and other lands to *T. Baskervill*, with all manner of tithes, waifs, estrays, fishing, fowling, and pannage, with other profits and royalties thereto belonging (suit of court only excepted) for ninety-nine years, at the rent of fifteen pounds, six shillings, and eightpence a-year, and that he held the same discharged from tithes; that afterwards the said abbey, and all the lands, rectory, and the tithes thereof, and the fee thereof, became legally vested in *King Henry the Eighth*, with all the privileges and exemptions thereto belonging, and that he, in the thirty-second year of his reign, granted the said grange, lands, and tithes, so demised to *T. Baskervill*, to *Stephen ap Harry* and his heirs, with all the king's hereditaments belonging to the said grange, or that were in *Baskervill's* possession, and reserved a rent to him and his successors; that no tithes were ever pretended to or demanded as due to his majesty, or successors, or other proprietors of the said rectory; that the lands, so granted, are now in the seisin of *Sir H. Hoskin, Knight*; and that the defendants hold their farms under him, as part of and belonging to *Morehampton Grange*.

Upon

Upon reading the proofs in the cause, and on full debate, it was ordered on the sixth day of *June* instant that a case should be drawn up and agreed on by counsel on both sides, and that copies should be delivered to THE BARONS for the opinion of the Court; but the Counsel not agreeing in one case, the Barons were attended with cases on both sides, and the cause came on again the twenty-first instant; and upon long debate of the matters of law arising upon the said cases, and hearing what could be alledged on each side, the Court took time to consider of the said matters till this day; the cause then standing for the judgment of the Court.

WATTS
against
WATKINS
AND OTHERS.
A case directed
to be stated for
the opinion of
the barons,

who take time
to consider of
the matter;

THE COURT now delivered their opinion *seriatim* for the plaintiff; for, that it appears to this Court, that the said abbey was one of *the lesser abbies*, but under the yearly value of two hundred pounds, and so not within the statute 31. *Hen. 8. c. 13.*; and though the said abbey was of the *Cistercian order*, yet it appears to the Court, that the lands in question were not privileged in the said abbot's hands, in respect of the said order from the payment of tithes; and also, that the tithes of *Morehampton Grange* were not conveyed, nor did pass to *Thomas Baskervill* by the abbot's lease, mentioned in the answers and case, nor to *Stephen ap Harry* by the letters patent, in the said answers and case mentioned, to be made to him in the thirty-second year of *Henry the Eighth*; and as by none of the ways and means in the answers and case, or by the proofs in the cause, there doth appear any exemption or discharge of the tithes of or for the said grange, or lands in the defendant's occupation, the same ought to be and are titheable to the plaintiff and this Court being upon the whole matter fully satisfied, that the plaintiff has a good title to the tithes in question,

and give judgment for the plaintiff, the said abbey, though of the *Cistercian order*, being under the yearly value of 200l.;

and the said Grange not being conveyed to *Baskervill* tithe free;

IT IS ORDERED AND DECREED, that the defendants do account for and pay to the plaintiff their respective tithes due for the lands and tenements, in and during the several years demanded by the bill, or the value thereof, with costs; and it is referred to the deputy remembrancer to take the said account, and to tax the costs.

the defendants
therefore decreed
to account.

ROB. ATKYNS.
NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

WICKHAM *against* STRODE,

Somersetshire, 5th December 1692.

MICH. TERM,
4. WIL. & MAR.

THE bill stated, that the plaintiff, for fifteen years past, had been rector of *Badgeworth*, in the county of *Somerset*, and claims tithes in kind, or 8d. an acre in lieu thereof,

The rector of
Badgeworth, in
Somersetshire
in lieu thereof,

entitled

WICKHAM
against
STRODE.

The defendant
states several *modus*
payable in
lieu of tithes;

entitled to all tithes of corn and grain, and of all meadow and pasture grounds, or else to eightpence an acre yearly, or some other composition or customary payment, in lieu thereof.

The defendants insist, that there was, and time out of mind had been, an ancient custom or *modus* for the payment of tithes for all meadow and pasture land mowed and fed in the said parish, viz. twopence an acre for all meadow ground yearly mowed, and eightpence an acre for depasturing and fattening unprofitable cattle, but that for oxen that labour in the plough, and all young cattle raised for the plough or pail, no tithe had been ever paid; that the rector had the tithe of corn and grain in kind; two shillings a-year for a cow; one shilling and sixpence for a heifer, for the first year; the seventh calf yearly, and no other payment.

but the defendant living out of the parish,

The principal question was, whether the defendant, having a house, and keeping servants and a plough within the parish, but dwelling out of the parish, ought to have the same privileges as other inhabitants dwelling within the said parish?

the Court is of opinion, that he is not entitled to the benefit of the *modus*;

THE COURT was unanimously of opinion, that the defendant was not such an inhabitant as was privileged by the custom of the said parish to pay only twopence an acre for his grounds mowed, but that he ought to account and pay as an outdweller;

and he is decreed to pay 8d. an acre, &c.

IT IS THEREFORE ORDERED AND DECREED, that the defendant shall account with the plaintiff, after the rate of eightpence an acre, for the tithes of all such meadow or pasture grounds as have been, by him or his servants, mowed, fed, or depastured with any sort of cattle whatsoever, within the parish aforesaid, during the four years in the bill mentioned, or any of them, and shall also account for such corn, grain, or other tithes arising upon his grounds within the time aforesaid, as have not been by him paid to the plaintiff.

MICH. TERM,
4-WIL.&MAR.

INGRAM and Another *against* REES.

Montgomeryshire, 29th November 1692.

The plaintiff, as owner of a portion of the tithes of *Llangirrick*, in the county of *Montgomery*, demands tithes of an inhabitant of *Llanysangell*, in the county of *Cardigan*, for sheep fed on a

THE bill stated, that *H. Phillips* was seised in fee, in common with the vicar of the parish of *Llangirrick*, in the county of *Montgomery*, and in right thereof was entitled to three parts in four, to be divided, of all manner of tithes yearly arising, &c. within the said parish; that the vicar of the said parish hath been, time out of mind, in right of his church, entitled to the other fourth part of the said tithes; that the plaintiff *Ingram*, by virtue of a lease from the said *Phillips* dated the third of *January*, in the third year of *James the Second*, became entitled to the said three parts in four of the said tithes, as a common appurtenant to certain cottages which the defendant occupied in *Llangirrick*.

INGRAM
AND ANOTHER,
against
REED.

parts for ten years, if *Margaret*, the wife of the said *Phillips*, should so long live; that the plaintiff *Williams* hath, for the time aforesaid, been vicar of the said parish and entitled to the other fourth part; that the defendant, being an inhabitant in *Llanybangell*, in the county of *Cardigan*, and renting two cottages in *Llangirrick*, hath, in right thereof, for three years past fed and depastured sheep on a common in *Llangirrick* appurtenant to the said cottages, from which he had lambs fallen therein, which said sheep and lambs depasturing there, the defendant in *May* or *June*, in each of the said years, conveyed privately into the county of *Cardigan* to be shorn, on purpose to deprive the plaintiffs of their tithes of wool and lamb, and the said defendant, in each of the said years, sheared his said sheep and took away his said lambs without paying the tithes thereof.

The defendant confessed, that he held a tenement in *Llanybangell*, and two cottages in *Llangirrick*; that there are great commons contiguously adjoining, part in the parish of *Llanybangell* and part in *Llangirrick*; that for three years he kept on *Nant y Gwedd*, and the said commons, several sheep, which had yearly lambs and wool; that his lambs were fallen and sheep shorn in *Llanybangell*, and the tithe paid to the vicar there; that, time out of mind, all those who lived in the tenement he now lives in, and elsewhere in the county of *Cardigan* adjoining to *Montgomeryshire*, and held cottages in *Montgomery*, and depastured sheep in both the counties, where the commons of both the said counties met and adjoined together, have always paid their tithes of wool and lambs in the parishes where they lived in *Cardigan*; that the inhabitants of *Montgomeryshire*, whose sheep sometimes depastured in *Cardigan*, paid their tithes in the parishes where they lived in *Montgomeryshire*; and that the like customs have been used in *Radnor*, *Cardigan*, and *Montgomeryshire*, where the commons of the said counties adjoined. He therefore hoped, that as he had paid his tithes to the vicar of *Llanybangell*, he should not be obliged to pay them over again.

The defendant says it was common *per cause de vicinage*, and that he had pursuant to custom paid his tithes to the vicar of *Llanybangell*.

To which answer the plaintiffs put in a special replication, and thereby said, they hoped to prove that the defendant had no right of common *by cause of vicinage*, or other common whatsoever in *Llangirrick*, nor any right of common there, save in respect of the said two cottages, and traversed the custom in the defendant's answer set forth;

The plaintiffs deny the custom.

The defendant rejoined; and witnesses were examined; and upon opening the pleadings;

IT IS ORDERED AND DECREED BY THE COURT, that the defendant shall pay to the plaintiffs, the value of the tithes of wool

The defendant ordered to pay his tithes to the plaintiff.

INGRAM
AND ANOTHER
against
REES.

wool and lambs for his said sheep fed and depastured on the commons in *Llangirrick*.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

MICH. TERM,
4. WIL. & MAR.

VERDON against WALLER.

Norfolk, 21st November 1692.

The vicar of
Denham, in *Nor-*
folk, demands
tithes in kind.

THE bill stated, that the plaintiff, for several years past, had been vicar of *East Dereham*, in the county of *Norfolk*, and entitled to receive from the inhabitants, owners, and occupiers of lands there, all tithes of corn, hay, wool, barren cattle, and all other tithes yearly arising, &c. within the said parish; that the defendant, for two years past, had been owner and occupier of a farm called *Yaxham Farm*, and had corn thereon, and kept many dry, barren, and unprofitable cattle, and milch cows; that he was also owner and occupier of a ground called *Scarlet*, for all which the defendant had paid no tithes, nor for his orchard, offerings, nor other dues.

The defendant
says the great
tithes are paya-
ble to the rector,
and as to small
tithes, states se-
veral *modus*es.

The defendant confessed, that he held *Yaxham Farm*, and the ground called *Scarlet*, and stated that the tithes of corn and grain belonged to *the parson*, and not to *the vicar*; that as to all other tithes (other than for marriages) the same were usually paid to the vicar at *Lammas Day* yearly; and that in *March* last, he paid fifteen shillings, in full satisfaction of all tithes and other duties due from him to that time; that before *Lady Day* 1689, he hired of the plaintiff certain grounds called *the Lounds*, in the said parish, tithe free, and that he kept thereon cows which had calves, and bought some in with calves, and by the custom he ought to have paid but one penny for a cow, and a halfpenny for a calf fallen, in lieu of tithes, if such agreement had not been made; that he fed bullocks, for which, by the custom, sixpence a beast is payable, in lieu of tithe herbage; that he kept a team of horses for which is a *plow penny*; that he had fruit and garden herbs, for which he was to pay a *loake hen*, if demanded, at *Christmas*; a halfpenny for *hearth silver*, in lieu of all tithe wood spent for fuel; and fourpence for offerings; and he denied that he had any other titheable matters in the said parish, except a few hens and turkies, for which a *loake hen* was paid if demanded.

Dismissed.

It is ordered that the said bill stand dismissed this Court.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

TURTON

TUFTON *against* BLINCOWE.HILARY TERM
4 WIL. & MAR.*Northamptonshire, 26th January 1692.*

THE plaintiff *Elizabeth Tufton*, an infant, by her next friend, her husband, set forth, that the liberty of *Purston*, in the county of *Northampton*, extends itself into the respective parishes of *Newbottle* and *King's Sutton*, each parish lying adjacent one to the other, and great part of both lying within the said liberty; that the owners of the respective impropriations or rectories appropriate have, time out of mind, of right had the thirtieth cock of all hay, or the third tithe cock of all hay, or of all sorts of grafs made into hay, annually arising within so much of each other parish, as lieth in the said liberty of *Purston*, or some rate or composition for the same; that the plaintiffs, or one of them, in right of *Elizabeth* for three years past, had been and were then seised in fee of the said impropriate rectory of *Newbottle*, and entitled to all tithes thereunto belonging, and particularly to the thirtieth cock of hay, or the third part of all tithe hay of all sorts growing upon so much of the lands in the parish of *King's Sutton*, as lie within the liberty of *Purston*, which the landholders there ought to have paid, or made a composition for; that the defendant in the said years had been occupier of ground within the liberty of *Purston*, and parish of *King's Sutton*, and had trefoil grafs, and other sorts of sown grafs there mowed and made into hay; that he had paid the impropriator of *Sutton* but two parts in three of the tithe thereof, and yet refuseth to pay the said plaintiff the other third part of the tithe.

The impropriator of *Newbottle* and *King's Sutton*, in the county of *Northampton*, demands the tithes in kind of so much of those parishes as lie within the liberty of *Purston*.

The defendant believed that *Purston* doth lie in the parishes aforesaid, but denied that the respective impropriators are entitled to a third part of the tithe hay, arising in that part of *Purston* which is not in their own parish, and to two third parts of that which is. He admitted, that he holds an estate from the *Civilian Professors* of *Oxford* lying in *Purston*, within the parish of *King's Sutton*, but believes that the plaintiffs have not any right to the third part of the tithe hay thereof (though he admits their title to the impropriate rectory of *Newbottle*), and therefore refused payment of his tithe grafs. He said, that during all the time of his memory, there hath been no tithe in kind of any sort paid out of his said estate to the impropriators of *King's Sutton* and *Newbottle*, save only seven pounds *per annum*, for all tithes to the impropriators of *King's Sutton*, and twelve shillings a-year to the vicar of *King's Sutton*, and five shillings a-year to the impropriators of *Newbottle*, as a *modus* for the defendant's said estate, and that he actually paid the five shillings a-year, for those years charged in the bill, to the plaintiff's tenants

The defendant pleads a *modus*;

TURTON
against
BLINCOWE.

tenants of the said impropriation in *Purston*, as he had done for many years before to the same persons, as tenants thereof.

and the plain-
tiff not appear-
ing,

The plaintiffs replied; the defendants rejoined; and witnesses being examined on both sides; the cause was set down at the request of the defendant, and came on to be heard this day; and upon reading an affidavit, whereby it appeared that the plaintiffs had been duly served with a *subpœna* to hear judgment, and no counsel attending for the plaintiffs to open their bill;

the mode is al-
lowed.

IT IS ORDERED AND ADJUDGED BY THE COURT, that the said defendant shall be dismissed of and from the said bill, and the matters and things therein contained.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

HILARY TERM,
4. WIL. & MAR.

SALMON against DENYER and Another.

Surry, 9th February 1692.

The lessee of the
tithes of *Fren-
cham*, in *Surry*,
demandeth the
of underwood in
the hamlet of
Cheart.

THE bill stated, that the parsonage of *Frencham*, in the county of *Surry*, was formerly appropriated to the archdeaconry of *Surry*; that *John*, late bishop of *Chester*, and archdeacon of *Surry*, by indenture of lease dated the seventh of *February* 1682, demised the said parsonage, and all manner of tithes and profits whatsoever to the same belonging and appertaining, to the plaintiff, his executors, and administrators for three lives; and that by virtue thereof, he became entitled to all and all manner of tithes whatsoever arising therein; that the defendant, in the year 1690, cut great quantities of underwood in the tithing of *Cheart*, within the said parsonage and rectory, and carried the same away without setting forth the tithes thereof, or making any compensation for the same.

The defendants
say they cut
wood in *Dinnott's
Meade*, and in
Quinnott's Moore,
in the *Wilds* of
Surry, which are
tithe free.

The defendants said, that in the said year they cut a row of alders in *Dinnott's Meade*, in the said parish, and about one acre of alder, birch, asp, and withy, in *Quinnott's Moore*, in all thirty cords of wood, which they sold, and that they did not set out the tithes of the said wood, or agree with the plaintiff for the same, for that the said meadow and moore do lie within the *Wild of Surry*, in the said county, and that the place called the *Wild of Surry*, and in which the wood grew, is, and hath been, time out of mind, free and exempt of and from the payment of all and all manner of tithe wood.

Two issues di-
rected.

The Court directed a *trial at law* in the court of king's bench, upon the following issues.

I

FIRST,

FIRST, Whether the tithing of *Cheart*, in the parish of *Frencham*, is within the *Wild of Surry*?

SALMON
against
DENYER

Whether *Cheart* is in the *Wild*. AND ANOTHER.

SECONDLY, Whether the *Wild of Surry* is exempt from the payment of tithe wood?

Whether the *Wild* is tithe free.

The cause standing in the paper of causes, pursuant to the order of the seventh instant, it was ordered, on the motion of counsel, that upon the plaintiff paying five pounds costs, for his delay in not going to trial, pursuant to the said order, a new trial should be had upon the former issues; the record to be made up in the office of pleas, and no where else by express direction of the Court, the plaintiff's counsel submitting thereto.

A new trial granted on payment of costs.

The record to be made up in the Office of Pleas.

The issues were accordingly tried, and a verdict was found for the defendants on both the issues;

Verdict for the defendant.

Afterwards at the earnest importunity of the plaintiff another trial was directed to be had by a special jury, on which second trial a second verdict was found for the defendants upon both the said issues.

A new trial and a second verdict for the defendants.

Upon hearing counsel on both sides, and reading the order and the *postea* upon the last trial, and on debate of the matter,

IT IS ORDERED AND ADJUDGED BY THE COURT, that the bill be absolutely dismissed.

Bill dismissed.

PLATTS against CAWTHORNE and Another.

HILARY TERM,
4. WIL. & MAR.

Yorkshire, 20th February 1692.

THE plaintiff, as vicar of the parish of *Topcliffe*, in the county of *York*, states, that, as vicar of the said parish, he ought to receive all *small tithes* arising, &c. therein, and for barren and unprofitable cattle, from such of the *residents* of the said parish, who agist such cattle, the sum of two shillings in the pound, or the sum contracted to be paid for the agistment; and from *foreigners* for unprofitable cattle depastured in the said parish, two shillings in the pound for every pound rent; that the defendants, in the year 1688, being *foreigners*, farmed several pasture grounds therein, and held the same in their own hands, and depastured them with dry and unprofitable cattle.

The vicar of *Topcliffe*, in *Yorkshire*, claims 2s. in the pound, and the sum for which *foreigners* contract to agist cattle.

The defendants confessed, that they were *foreigners*; that they farmed certain pasture grounds called *Maiden Bower* and *Manor Wood*, and depastured the same with several fat, barren, and unprofitable cattle, but kept no account, as they knew not of any money due to the plaintiff for any cattle depasturing there,

The defendants say they are *foreigners*, and have agisted cattle in *Maiden Bower* and *Manor Wood*, and that they ought by prescription to pay only 20s. a year.

by prescription to pay only 20s. saving

PLATTS
against
CAWTHORNE
AND ANOTHER.

saving that twenty shillings a-year prescription money hath been always paid to the vicar by *Mr. Bickerstaffe* and the *Duke of Somerset*, under whom they claim the said lands, and that he has constantly accepted the same, in lieu of all tithes out of the said closes, and all other the lands aforesaid.

But the evidence they produced prove the prescription sum to be 40s. a-year.

Upon hearing counsel on both sides, in respect the defendants have by their answers insisted on a *modus* of twenty shillings *per annum*, in lieu of tithes of *Maiden Bower* and *Manor Wood*, and have proved a *modus* of forty shillings *per annum* for the tithes of the said lands, and other lands of the *Duke of Somerset*, in *Topcliffe* aforesaid;

THE COURT thought fit to decree for the plaintiff.

Payment decreed accordingly.

AND THEREFORE IT IS ORDERED, AND ADJUDGED, AND DECREED, that the defendants do forthwith pay to the plaintiff the tithes for the depasturing of the said lands, called *Maiden Bower* and *Manor Wood*, for the said year 1688, amounting to four pounds according to the rent of the said lands for that year.

HILARY TERM
4 WIL. & MAR.

ERNSTE and Others against WATTS.

Herefordshire, 21st February 1692.

The modes of paying vicarial tithes of apples, pears, cyder, perry, sheep, lambs, calves, garden, milk, and *Easter* offerings, in the parish of *Much Marle*, in the county of *Hereford*.

THE plaintiffs, inhabitants and occupiers of land within the parish of *Much Marle*, in the county of *Hereford* and the titheable places of and belonging to the same, filed their bill against *Watts*, the vicar of *Much Marle*, for the purpose of settling and establishing the *modus*es, for small tithes, arising within the said parish, *viz.* FIRST, for such apples and pears as every respective parishioner had gathered and sold, the tenth part of the money for which he sold the same; and for such winter fruit as the parishioner gathered to eat or use in his own house, the tithe in kind; for apples or pears made into cyder or perry, the tenth hogshead if so many were made, if not so many as ten, then but twopence for the tithe of every hogshead under ten; if more than ten and under twenty, then twopence for every hogshead above ten and under twenty; if twenty hogsheads be made, then the vicar to have one hogshead more; and so every tenth hogshead that he made, and for what is under or above to pay only twopence a hogshead for the tithe thereof.

SECONDLY, where sheep are kept within the parish the whole year round, and shorn there, the tithe of the wool is to be paid to the vicar in kind, but where the sheep are not kept within the parish the whole year round, fourpence a score for every month the same are kept within the parish, and no tithe wool in kind to be paid for such sheep.

THIRDLY,

ERNEST
AND OTHERS
against
WATTS.

THIRDLY, for the tithe of lamb, the tenth lamb in kind, and where there are but seven lambs, the seventh lamb in kind, the vicar paying to the owner three halfpence, but where the owner has not so many lambs as seven in one year, then the owner to pay one halfpenny to the vicar for the tithe of every such lamb under seven; the choice of the said lambs to be thus, the owner or occupier first to choose two, and the vicar the next or third, and afterwards the owner to choose nine more, and the vicar the next, and so forward after the like manner.

FOURTHLY, as to the tithe of calves, the vicar to have every tenth calf in kind, and where there are but seven, the vicar to have the seventh calf, paying one shilling and sixpence to the owner, and when under seven, then the vicar to be paid one halfpenny for every calf under seven, which the owner keeps and breeds up for store, and sixpence for every calf under seven which he kills in his own house, or sells, or disposes of.

FIFTHLY, for every colt foaled within the said parish, sixpence.

SIXTHLY, for geese and pigs the tithe in kind, but where there are but seven geese or seven pigs, then the vicar to have the seventh for tithe.

SEVENTHLY, for every garden within the said parish one penny, in lieu of tithes arising out of such garden.

EIGHTHLY, for the milk or cow white, for every cow kept within the said parish, one penny.

NINTHLY, for the *Easter* offering, twopence for every house-keeper; for his wife twopence; and for every child fit to receive the communion twopence; for every man servant fourpence; and for every maid servant threepence.

The defendant admitted the *modus* as stated in the bill.

THE COURT therefore confirmed and established the said duties, customs, *modus*, and *Easter* offerings, in such manner as in the said bill are set forth.

NICH. LECHMERE.
JOHN POWELL.

WARD and Others against HILDER.

London, 18th May 1693.

EASTER TERM,
5. WIL. & MAR.

THE bill stated, that *Queen Elizabeth*, being seized in fee in right of THE CROWN OF ENGLAND of the impropriate

payment of tithes in *London*, extends both to lay impropriators and spiritual persons, as. and as. Car. 2, c. 15 for the maintenance of parsons, vicars, and curates, which were destroyed by the fire of *London*, extends to preaching ministers only.

The statute 37.
Hen. 8. c. 12.
for regulating the
but the statute
in those parishes

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X

rectory

WARD
AND OTHERS
against
HIDER.

rectory and church of *Saint Lawrence Poultnoy*, in the city of *London*, and of the vicarage of the said church, and of all tithes, customary payments in lieu of tithes, lands, and hereditaments thereunto belonging, by her letters patent dated the twelfth of *March*, in the thirty-third year of her reign, granted to *E. Downing* and *R. Rant*, the said rectory with the rights and appurtenances thereof, and the advowson thereof, and all the lands, tithes, and profits to the said rectory and vicarage belonging, to hold to them, their heirs, and assigns, under a fee farm rent of four pounds, six shillings, and ninepence, a-year; that the title and interest of and in the said rectory, vicarage, tithes, and premises, is and are by mesne conveyances come to and vested in the plaintiffs, who now are, and for several years past have been duly entitled to, and ought to have and enjoy all tithes, rates, and customary payments in lieu of tithes, whether due by custom or common right, or according to the decree made in the thirty-seventh year of *Henry the Eighth* for the payment of tithes in *London*, and all dues and profits to the said rectory and vicarage belonging; that anciently, and time whereof the memory of man is not to the contrary, or by other good right and title, there hath been due and payable, and till of late hath been paid, and of right ought still to be paid by the owners and proprietors of the said rectory and vicarage, their farmers or lessees, for, or in lieu, or in the name of tithes, out of and for the ground, whereon, at the time of filing the bill, a large dwelling-house was then standing within the said parish, which then was, and for three years then last past and upwards, had been in the defendant's occupation, and out of and for a yard and wharf adjoining or belonging to the said house, which was, during the time aforesaid, held by the defendant, the yearly sum of one pound, sixteen shillings, or some such like yearly sum, by four quarterly payments. or in some other manner; that the said sum had been in arrear for three years, ended the twenty-fifth of *March* 1692, and ought to have been paid to the plaintiffs, or else the said defendant ought to have paid to the plaintiffs for the premises, according to the said decree, for every ten shillings rent by the year one shilling and fourpence halfpenny; and for every twenty shillings rent by the year two shillings and ninepence, and so above the rate of twenty shillings by the year, ascending from ten shillings to ten shillings, or else the defendant ought to have paid some other rate or customary payment, for or in the name of tithes, for the premises in his own possession for the said three years past, being of the yearly value of sixty pounds and upwards; that the defendant taking advantage of the houses and buildings, which formerly stood on the ground in question, having been burnt down in the year 1666, and of the present buildings being on new foundations, pretends that no tithes or rates for tithes are payable for the premises, or if any, yet that two shillings and ninepence in the pound are not payable

payable, but some other rate. The bill therefore prayed, that the defendant might discover what houses, wharfs, and grounds he hath been possessed of within the said parish for the said three years, and the yearly value thereof, and be compelled to pay the accustomed rates, and may set forth what is due for oblations.

WARD
AND OTHERS
vs
HILL.

The defendant said, that he knew nothing of the said letters patent, or of the decree aforesaid, nor upon what account the plaintiffs can demand tithes; he confessed that he had been an inhabitant in the said parish for nine years, and still was a house-keeper there, and that for some of the said years he had paid one pound, sixteen shillings, rated and assessed upon him for the dwelling-house, shop, and ground, for or in lieu of tithes, oblations, and other ecclesiastical duties, but for how many years he remembered not; that after he had lived some time in the said parish, he found he was over-rated, and refused to pay the same: he also confessed that his house was worth forty pounds *per annum*, and that, as he was over-rated, he had not paid any tithes for the same for the time in the bill mentioned.

The plaintiffs replied; the defendant rejoined; and witnesses were examined; and after reading the said grant from *Queen Elizabeth*, and several mesne conveyances;

The defendant's counsel insisted, that the statute 37. *Hen. 8. c. 12.* extends only to spiritual issues, and not to impropriators, and that, by the statute 22. & 23. *Car. 2. c. 15.* a new method is prescribed for the recovery and payment of tithes and duties within the several parishes demolished by the great fire in *London*, in the year 1666.

But THE COURT was of opinion, that the 37. *Hen. 8. c. 12.* extends as well to lay impropriators, as to spiritual persons, and that the 22. & 23. *Car. 2. c. 15.* extends not to impropriators and their rights, but was passed for the maintenance of preaching ministers; and therefore, that the said defendant is chargeable with, and after the rate of two shillings and ninepence in the pound, unless he can make it appear, that there is some ancient or customary rate or payment in lieu of tithes.

The plaintiffs in this case submitted to accept the said rate of one pound sixteen shillings *per annum* formerly paid for the house and premises in question, which appeared to be of the yearly value of forty pounds, if the defendant (as he had formerly done) would continue to pay the same, which he, being present in court refused to do,

IT IS THEREUPON ORDERED AND DECREED, that the defendant shall pay to the plaintiffs or their assigns the arrears of the tithes of the said house and premises in his occupation, for the three years in the bill mentioned, ended twenty-fifth of

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AND OTHERS
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March 1692 at two and ninepence in the pound rent, or value of and for his said house and premises, the same to be rated and valued at and after the rate of thirty pounds *per annum*, for the yearly rent or value of the said house and premises, during the said three years, which the plaintiffs submit to accept, though proved of a greater value in the cause; which arrears being computed in court do amount yearly to four pound, two shillings, and sixpence, and for the whole three years, ended the twenty-fifth of *March* 1692, do amount to twelve pounds, seven shillings, and sixpence, according to the said decree made in thirty-seventh year of *Henry the Eighth* for the payment of tithes in *London*, which said sum the said defendant is hereby ordered and decreed forthwith to pay, to the plaintiffs, or their assigns (a).

ROB. ATKYNS.
JOHN TURTON.
JOHN POWELL.

(a) See post. the cases of *Grant v. Cannon*; *Sawyer v. Mumfort*; *Towley v. Wilson*; and *Bennet v. Trepas*.

EASTER TERM,
5. WIL. & MAR.

DEWEY *against* PRICE.

Gloucestershire, 22d May 1693.

The plaintiff, as lessee for life of the parsonage of *Turke Dean*, in *Gloucestershire*, complains, that the vicar, subtracted tithes of corn, to which he claims a right.

THE bill stated, that the plaintiff was seised in freehold for life, &c. by and under the demise of the dean and chapter of *Christ Church*, in *Oxford*, of and in the parsonage of *Turke Dean*, in the county of *Gloucester*, and entitled to all corn and hay to the same belonging; that the vicarage of *Turke Dean* hath been anciently endowed with the tithes of corn only of certain lands called *Three Yard Lands*, and with part of the tithe of hay of some of the several inclosed grounds when mowed; that part of the said inclosed grounds called *Maw Busb*, the *Way Longate*, the *Cow Close*, and the *Catwells*, being no part of the *Three Yard Lands*, being lately committed to tillage, and the tithes thereof set forth by the occupier of the said ground, the said defendant as vicar carried away the tithe. The bill therefore prayed, that the defendant might set forth his title to the tithe corn, and what quantity he had taken away, and the value thereof, and also set forth the writings he hath relating thereto, and that the right of the said tithes might be settled.

The vicar denies the right, and claims the tithe of the corn under the endowment.
2. Roll. Abr. 309, 310.
3. Bl. Com. 88.

The defendant answered, that the vicarage, time out of mind, was endowed with the tithes of hay of the several inclosed grounds before mentioned, and that the said lands were never tilled till lately, but that the grass thereon was usually mowed and made into hay, and the tithe thereof constantly paid to the defendant and his predecessors; that part of the *Maw Busb*, and also the *Way Longate*, and an acre in the *Cow Close*, and an acre in *Little Catwell*, in the defendant's tithing, have lately been ploughed up, and corn sown thereon in 1690 and 1691; that the tithes of the said corn belonged to him as part

part of the endowment of the said vicarage, and that in the said years he did take and carry away the tithes of the said corn. He confessed, that he has in his custody a terrier, which he set forth in his answer, but no other writing concerning the said vicarage, or the endowment thereof.

DREWY
against
PRICE.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides, and upon reading the proofs, and on debate,

THE COURT is of opinion, that the plaintiff's remedy is at common law, and not in equity, against the said defendant for the said tithes taken away as aforesaid. It is therefore ordered, that the said bill be dismissed out of this Court.

The bill dismissed, the plaintiff's remedy being at common law.

ROB. ATKINS.

NICH. LECHMERE.

JOHN TURTON.

HITCH *against* FORSTER and Others.

TRIN. TERM,
5. WIL. & MAR.

Northumberland, 29th June 1693.

THE plaintiff, as impropriator of the rectory impropriate of *Felton*, in the county of *Northumberland*, stated, that for several years past he had been seised in fee of the said rectory or parsonage impropriate, with the chapelry of *Long Framlington* belonging thereto, and of all the great and small tithes arising therein; that the defendants had been occupiers and possessors, for several years past, of lands lying within the said rectory and parish, and particularly of two parcels of land called *the Fence*, otherwise *Felton Forest*, and *the High Moore*, otherwise *Felton Common*, lying therein, upon which parcels of ground they had corn and grain, which they mowed and carried away without setting out the tithes thereof, or paying any composition for the same.

The impropriator of *Felton*, in *Northumberland*, claims the great tithes of *Felton Forest* and *Felton Common*.

The defendants said, that the vicarage of *Felton* is endowed with the great tithes arising out of that part of the said parish called "the township of *Felton*;" that the said grounds called *the Fence*, and the *High Moore*, were formerly part of a great moor lying within the said parish, called *Beckengfield Moor*, wherein the vills and townships adjacent thereto had a right of common; that the said two parcels of ground upon the division and inclosure of the said moor were allotted and set out to the inhabitants of the township of *Felton*, in lieu of their right of common, in the residue of the said moor; that one *Widrington* was formerly occupier and possessor of the said grounds called *the High Moore*, and *the Fence*, who refusing to pay tithes for the same, *Harrison*, the then vicar, brought an action for the same, and obtained a verdict against him, and that *the vicar*, and his successors, have ever since had and enjoyed the tithes of the said ground. The

The defendants say, the said tithes belong and have been paid to *the vicar* of *Felton*, because the said two parcels of ground were part of a common, and upon the inclosure thereof were allotted to the township of *Felton*; the great tithes of which township belonged to the vicar.

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against
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AND OTHERS.

defendants confessed they were occupiers of the said grounds, and averred, that they had paid their tithes arising thereon to the vicar of *Felton*, and intended so to do; insisting that the said grounds, upon the division of the said moor, being allotted to the township of *Felton*, in lieu of their right of common in the said moor, and the vicar being entitled to all the great tithes arising within the said township, he is likewise entitled to the tithes arising out of the said new inclosed grounds so allotted to the township as aforesaid.

An issue directed
to try whether
the said ground
was parcel of the
township of *Fel-*
ton.

A trial at law was ordered upon the following issue, viz.
“ Whether the grounds in the defendant's possession called *the*
“ *Fence*, otherwise *Felton Forest*, and *the High Moore*, otherwise
“ *Felton Common*, or either of them, or any and what part of
“ them, or of either of them, before the inclosure and division
“ of the said moor called *Beckengfield Moor*, belonged to, and
“ was, or were part or parcel of the vill or township of *Felton*,
“ or not ?”

Verdict for the
defendants.

A trial was accordingly had, and on full evidence, a verdict was given for the defendants, viz. that the said grounds called *the Fence*, otherwise *Felton Forest*, and *the High Moore*, otherwise *Felton Common*, in the possession of the said defendants before the inclosure and division of the said moor, called *Beckengfield Moor*, did belong to and were part and parcel of the said vill or township of *Felton*.

The bill dismiss-
ed.

Whereupon, no counsel appearing for the plaintiff, IT IS FINALLY ORDERED AND ADJUDGED BY THE COURT, on the sixteenth of *November* 1693, that the said defendants shall be absolutely dismissed of and from the said bill, and the matters and things therein contained (a).

THE COURT FULL.

(a) On the fourth of *February* 1691, in Hilary Term, in the third year of William and Mary, the present plaintiff *Hitch* filed a bill in the exchequer against one *Townes*, claiming the great tithes of a parcel of ground called *Long Dyke Green*, or *Long Dyke Intack*, formerly a part of *Beckengfield Moor*. The defendant, by his answer, stated a *modus* of thirteen shillings and fourpence a year, in lieu of the tithes of corn and hay, and that the said grounds, on the inclosure of *Beckengfield Moor*, about sixteen years before the filing of the bill, had been allotted to the farm of *Long Dyke*, of which he was in the occupation, in lieu of the right of common which he had on the said moor; and insisted, that the ground so allotted to him was included in the *modus*, as part of his said farm; but, on being served with the *subpoena*, he neglected to attend the hearing of the cause; and

IT WAS ORDERED AND DECREED, that he shou'd pay the tithes for the sixteen years demanded by the bill.—On the ninth of *February* 1698, *Hitch* the present plaintiff, filed another bill against *Henderson*, the vicar of *Felton*, claiming the tithes of corn and hay of *Felton Forest* and *Felton Common*; but the defendant insisted, that the said tithes belonged to him as vicar, the said *forest* and *common* being within the precincts of the township of *Felton*, and he, as vicar, being entitled to all tithes within the said township, except the tithes of calves, lambs, wool, and bees; and he stated the above decree as a proof of his right; and THE COURT, on inspecting the decree, and finding the matter had been tried by an issue as above stated, dismissed the plaintiff's bill, and left him to take his remedy at law.

NASH

NASH *against* Pocock.*Berkshire, 22d June 1693.*TRIN. TERM,
5. WIL. & MAR.

THE plaintiff, as rector of *Binfield*, in the county of *Berks*, stated, that he had been rector for twenty years past, and was entitled to all great and small tithes in the parish; that the defendant, for four years past, held and occupied meadow and pasture ground, and fed the same with unprofitable cattle, and refused to pay any thing for the tithe herbage; that in the year 1692, he mowed grass and made the same into hay, and carried it away without setting out the tithes thereof, and in the said years had kept and fed sheep, lambs, horses, cows, &c. and had wool, eggs, milk, &c. the tithes whereof he refused to pay.

The rector of *Binfield*, in *Berkshire*, claims the tithe of hay.

The defendant stated, that the plaintiff had received the greater part of his tithe hay, but had refused to receive the rest, because it was cocked out of the swarthy grass and set out, the plaintiff pretending that the same ought to have been tedded by the defendant before the tithe was set out; that before the plaintiff commenced this suit, he in *August* 1692 tendered to the plaintiff one pound, eight shillings, and elevenpence, for the value of his said tithes, which the plaintiff refused to accept in full, alledging there was more due.

The defendant says, that he set it out, but that the plaintiff refused to carry it away because it was swarthy grass, and ought to have been tedded.

THE COURT decreed the defendant to pay to the plaintiff five shillings for the value of the tithe grass, which he had mowed in a piece of ground next adjoining to his house, in the year 1692,, for that the defendant refused to let the plaintiff's cart, which was almost loaded with the tithes of other persons, come upon the said ground to fetch it away that was set forth; but for the tithe of any other grass or hay which the defendant had in the said year, in the said parish, the plaintiff is left to his liberty to take his course for the recovery thereof.

The defendant ordered to pay the value of the tithe grass he mowed in the ground adjoining his house;

And it is further ordered, that the defendant shall account with and satisfy the plaintiff for the tithe herbage, and other the small tithes demanded by his bill, for the said years; the deputy remembrancer to take the said account, and to certify respecting the tender.

and to account for the tithe herbage, &c.

YARD *against* STOBELL.*Devonshire, 15th July 1693.*TRIN. TERM,
5. WIL. & MAR.

THE bill stated, that the plaintiff, for twenty years last past, hath been owner of the rectory and parsonage impropriate of *Dean Prior*, in the county of *Devon*, and entitled to all tithes *Devon*, claims to have the tithes of wheat set out in *stitches*, and not in *beaves*, and so have notice of its being so set out.

The impropriator of the rectory of *Dean Prior*, in the county of *Devon*, and so have notice of its being so set out.

YARD
against
STOBELL.

whatsoever, whether great or small arising therein, and the titheable places thereof; that, beyond the memory of man, it was always the constant custom of the parishioners, farmers, and justment holders, who had any tithes of corn, grain, grass, hay, wool, and other tithes in the said parish, or titheable places thereof, either to compound with the plaintiff, or to set out, for their tithes of grass or hay, every tenth *pooke*; for the tithe of wheat, every tenth *stitch*; for the tithes of barley and oats, every tenth *scove*; and for the tithes of wool, every tenth *fleece*, and to give notice to the plaintiff, or his agents, when to fetch the same away; that the defendants, from *September* 1690 to this time, had been owner of arable, pasture, and meadow grounds, and sowed the same with wheat, rye, barley, &c. and had reaped and carried away the same, and did not set out the wheat in *stitches*, according to the custom.

The defendant
says, the custom
is to set out the
wheat in sheaves.

The defendant admitted the custom of tithing grass, hay, wool, barley, and oats, to be as stated in the bill, but denied the custom of tithing wheat to be by the tenth *stitch*, and also the custom of giving notice to the plaintiff, or his agents, when to fetch away his tithe. He confessed that he had, in the year 1692, four acres of wheat, in a field called *New Park*, the tithe of which were set out in sheaves, and notice given to the plaintiff's agent, who neglected to take away the same, the tithes of which were worth sixteen shillings.

The defendant
neglects to at-
tend the hear-
ing.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon opening the pleadings, and reading an affidavit of the due service of the *subpœna* to hear judgment, and no counsel appearing for him, and on reading his answer, and the depositions taken in the cause;

The Court de-
cree the custom
to be to set out
wheat in *stitches*,
and for odd
numbers by eve-
ry tenth *sheaf*.

IT IS ORDERED AND DECREED, that the *modus* of tithing wheat within the said parish of *Dean Prior* is by setting or laying forth every tenth *stitch*, where there are to the number of ten *stitches*, and as to the tithing of *stitches* under the number of ten, that the *modus* of tithing such odd number is by setting or laying forth every tenth sheaf.

And forasmuch as it appears by the proofs taken in the cause, that the defendant, in the year 1692, set forth his tithes of wheat in sheaves and not in *stitches*,

The defendant
pays costs, and
obtains a re-
hearing.

IT IS FURTHER ORDERED, that the defendant shall pay to the plaintiff the value of the tithes of the said wheat by him reaped in the year 1692; the deputy remembrancer to take the account accordingly, unless the defendant shall shew cause to the contrary, first paying five pounds costs, before he can be heard.

An issue directed
to try the cus-
tom.

The defendant paid the costs of the day; and on the twentieth of *November* 1693, the Court ordered a *trial at law*; by a special jury

jury upon this issue, viz. Whether the *modus* of tithing of wheat within the said parish of *Dean Prior* is by setting forth of the tithe of wheat in stitches?

YARD
against
STOBELL.

A trial was accordingly had, and a verdict passed for the plaintiff; that the *modus* for tithing of wheat growing within the parish of *Dean Prior* hath been, time out of mind, by setting forth the tithe thereof in stitches.

A verdict found
for the plaintiff.

THE COURT accordingly ordered, that the defendant do pay the plaintiff sixteen shillings for the tithes of his wheat in 1692, being the value confessed in his said answer.

22d May 1694.
Tithes decreed
accordingly.

GRANT *against* CANNON.

London, 20th November 1693.

MICH. TERM,
5. WIL. & MAR.

THE plaintiff, being seised in fee of and in the impropriate rectory of *Saint Dunstan's in the West*, within the city of *London*, and county of *Middlesex*, and the hamlets thereto belonging, claimed tithes by virtue of the statute 37. *Hen. 8. c. 13.*

The *Red Hart Inn*, in *Fetter-Lane*, is within the city of *London*, and not within the liberty of THE ROLLS.

The defendant confessed, that he was owner of the *Red Hart Inn*, in *Fetter-Lane*, but denied that any part thereof was in the city of *London*, and said that the same is within the liberty of THE ROLLS, which liberty is exempt from the payment of tithes. He confessed that he held the said inn, and let the other tenements.

On debate of the matter, and reading the depositions taken on behalf of the plaintiff, whereby it plainly appeared that the premises in question, in the defendant's occupation, are within the liberty of the city of *London*,

THE COURT was of opinion, that the defendant ought to pay after the rate of two shillings and pence in the pound, according to the stat. 37. *Hen. 8. c. 13.*

KENYON *against* WEST.

Berkshire, 23th November 1693.

MICH. TERM,
5. WIL. & MAR.

THE vicar of *Warfield*, in the county of *Berks*, by his bill stated, that in the years 1690 and 1691 the defendants had brought up divers calves, which they sold, or killed and converted to their own use, without paying the plaintiff the tenth part of the value of such calves for the tithes thereof, but instead thereof would oblige the plaintiff to accept of the shoulders of such calves when killed, without any custom or law so to do.

The owner of a single calf shall, of common right, pay the tenth part of its value when taken from the cow, in lieu of tithes.

KENTON
against
WEST

The defendant *West* confessed that he had one calf, which he sold for thirty-five shillings, reserving a shoulder for the plaintiff, which he sent, but that the plaintiff refused to receive it.

The defendant *Bowyer* said, that he owed to the plaintiff for the tithes of two calves, one whereof he had weaned from the pail, and the other he had sold, but had reserved a shoulder for the plaintiff, which he tendered to him, and that he had refused to accept of it.

The question was, whether of common right a single calf is titheable or not; and if titheable, then how and after what manner the tithe thereof ought to be paid?

THE COURT, upon debate of the matter, was of opinion, that one calf is titheable, and that the tenth part of the value thereof, when taken from the cow to be sold or killed, ought to be paid for the tithe thereof.

MICH. TERM,
5. WIL. & MAR.

HODGSON against SKELTON.

Cumberland, 5th December 1693.

The mode of
tithing corn in
the parish of
Thornthwaite, in
the county of
Cumberland.

THE plaintiff demanded the values of the tithes of corn and grain of several lands in the parish of *Thornthwaite* called *Thornthwaite Demesne*, in the county of *Cumberland*.

The defendant insisted on a *modus* of seven bushels of rye, each bushel containing twenty-four gallons, according to a bushel in *Carlisle*, to be payable in lieu of the tithes of corn for the lands.

THE COURT, upon opening the bill and answer, and hearing counsel, was of opinion, that the *modus* set forth in the answer was proper to be tried at law; viz. "Whether, time out of mind, seven bushels of rye, each bushel containing twenty-four gallons, according to the measure of a bushel in *Carlisle*, had been yearly paid on *Easter Monday*, or so soon after as the same was demanded, as a *modus* or prescription in lieu of the tithes of corn and grain arising on the demesne lands of *Thornthwaite* aforesaid?"

A trial was had, and upon full evidence, the jury gave a verdict for the defendant.

THE COURT therefore ordered the defendant to be dismissed of and from the said bill and the matters therein contained.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

SLAUGHTER

SLAUGHTER and Others *against* LEY.*Worcestershire, 20th February 1693.*HILARY TERM
5. WIL. & MAR.

SEVERAL of the plaintiffs were owners and occupiers of lands and tenements in the parish of *Doddensham*, in the county of *Worcester*; the other plaintiffs were owners and occupiers of lands in *Knightwick*; the defendant was rector of the said parishes.

The bill stated a custom in the parish of *Doddensham* to pay one penny a hoghead for all apples and pears there growing and made into cyder or perry, in lieu of the tithe in kind of all such apples and pears, and the like custom of twopence a hoghead.

THE COURT, upon reading several depositions of witnesses, and on full debate, ordered the custom of one penny and twopence aforesaid, for and in lieu of tithes in kind of such apples and pears, for every hoghead of cyder and perry as aforesaid, to be ratified and confirmed.

There are *modest* of 1d a hoghead and 2d. a hoghead of cyder and perry payable in the parishes of *Doddensham* and *Knightwick*, in the county of *Worcester*, in lieu of the tithes of the apples and pears of which such cyder and perry is made.

PINDAR *against* JACKSON.*Derbyshire, 8th February 1693.*HILARY TERM
5. WIL. & MAR.

THE bill stated, that the plaintiff, for five years past, had been owner and proprietor of the impropriate rectory of *Hartington*, within the wapentake of *Wirkesworth*, in the county of *Derby*, and that there is a custom within the said wapentake, that the grovers or miners within the same shall pay to the parson or vicar of the respective parishes within the said wapentake a customary duty of lead ore, called the *tenth dish*, of all lead ore gotten within the said parishes; that more particularly within the said parish of *Hartington* and the titheable places thereof, there is a custom that the grovers or miners shall pay to the impropriate rectory of the said parish the *tenth dish* of all such lead ore as is gotten within the said parish and the titheable places thereof; that the defendants were miners and owners, or partners of mines or groves within the said parish, and had for five years got great quantities of lead ore; but that they had refused to pay the tithes of the same according to such custom.

The rector of *Hartington*, in the county of *Derby*, is entitled to the *tenth dish* of all lead ore dug in the said parish, in lieu of the tithes thereof.

The defendants denied, that in the parishes of *Matlock* and *Bradborne*, within the said wapentake, there was any custom for the payment of any duty for lead ore to the rector there, and insisted that, in those two parishes, there had been two verdicts at law against the payment of the said duty. They also denied the custom as stated in the bill, or that any tithe or duty was payable for lead ore within the parish of *Hartington*.

A trial

PINDAR
against
JACKSON.

A trial at law was directed on the following issue, "Whether within the parish of *Hartington*, and the titheable places thereof, there is, and time out mind hath been a custom there used, that the grovers and miners there have paid to the impropriate rector of the said parish a customary duty called the *tenth dish* of the lead ore gotten in the said parish and titheable places thereof, or not?" to be tried in the county of *Nottingham*.

A trial was accordingly had upon the said issue by a special jury of the city of *Nottingham*, and a verdict, upon full evidence, was given for the plaintiff.

THE COURT thereupon decreed the defendants to account with the plaintiff for the value of the tenth dish of the lead ore by them respectively gotten within the said impropriate rectory of *Hartington* during the time in the bill mentioned.

TRIN. TERM,
5. WIL. & MAR.

WALKER against PORTER.

Derbyshire, 6th July 1693.

A deed obtained
by fraud and
contrivance va-
cated.

THE bill stated, that *S. Wilson* was seised of a messuage and divers lands in *Finderne*, in the county of *Derby*, and of the third part of the tithes of corn and hay growing therein; that about the twenty-sixth of July 1665 he made his will, and devised the same to the plaintiff and to the defendant's son and their heirs, and that they came to them as joint tenants; that the defendant's son died, at whose decease the whole came to the plaintiff; that upon the death of the defendant's said son, the defendant got into possession and received the values thereof to his own use; that one moiety thereof belonged to the plaintiff immediately after the testator's death, and the whole after the decease of the defendant's son. The bill therefore prayed, that the defendant *George Porter* may account for the rents and profits of the said tithes which he has hitherto received, and deliver up all deeds, &c. in his custody concerning the same.

The defendant said, that he believed that *S. Wilson* made such a will, and that the premises, &c. came to the plaintiffs and to their son; that they were both infants; that their son died, and that the messuage and premises came to the plaintiff; but they conceived that the tithes were not devised by the will, they being purchased by *S. Wilson* after the making of his will; that if no will had been made the plaintiff would have been entitled to a moiety of the premises as son and heir. They confessed the reception of the tithes since the testator's death, and that he had converted the same to his own use, and a moiety whereof he claimed in right of his wife, one of the sisters of the said *S. Wilson*, and obtained a deed from the plaintiff.

THE

THE COURT being satisfied that the deed of purchase of the tithes in question was gained by the defendants from the plaintiff by fraud and contrivance, and therefore ought to be vacated, and the plaintiff let into possession of the said tithes, and that the plaintiff ought to have an account from the defendant of one moiety of the tithes in question, from the death of the said *S. Wilson* till the death of the defendant's son *S. Porter*, and since the death of him for the whole profits of the tithes in question.

WALKER
against
PORTER.

IT IS THEREFORE ORDERED AND DECREED, that the defendant shall account with the plaintiff for one moiety of the tithes, from the death of the said *S. Wilson* till the death of *S. Porter* (the defendant's son), and for the whole profits of the said tithes ever since the death of *S. Porter*; and that the plaintiff should hold and enjoy the whole tithes in question for the future against the said defendants and all claiming under them, and be relieved against the defendant as aforesaid.

LECHMERE, *Baron.*
TURTON, *Baron.*
POWELL, *Baron.*

CAVE *against* EARNESBY and Others.

Leicestershire, 14th May 1694.

EASTER TERM,
6. WIL & MAR.

THE bill stated, that about seven years since the plaintiff was instituted, &c. into the parish church of *Calthorpe*, in the county of *Leicester*; that he had duly officiated there ever since; and was entitled to all the glebe lands, tithes, and other profits belonging thereto; that, time out of mind, and until the year 1655, there were in the said town of *Calthorpe* three common and open fields, one whereof was called *Mill Field*, in or near which was a parcel of meadow ground called *the Great Meadow*, belonging to several persons, which, time out of mind, and until the aforesaid year, was laid yearly for hay, from *Candlemas* in each year until it was inned as the owners or seasons agreed or permitted, which was usually about *Midsummer*, and from the time of inning until *Candlemas* following the same was depastured in common; that, time out of mind, until the said year, divers parcels of land, meadow and pasture, belonging to the rectory as part of the glebelands thereof, lay dispersed in the said three open fields, and that all former rectors were seised thereof in right of the said church; that, in the said year 1655, the said three common fields, and the great meadow, were all inclosed, and exchanges were made, and all right of inter-commoning was excluded; that on such inclosures a parcel of the said great meadow, about five acres, was set out for the rector for ever; that

The plaintiff, as rector of *Calthorpe*, in *Leicestershire*, states, that upon enclosing certain common fields, a portion thereof, called *Parson's Meadow*, was allotted to the rector, and that there was a way to the same, which the defendant had stopped up;

CAVE
against
EARNESBY
AND OTHERS.

and prays that a
convenient way
may be made to
the said mea-
dow.

The defendant
denies the right
of way claimed
by the rector.

The Court issue
a commission to
view the premi-
ses, and to set
out a convenient
way;

that the said parcel of land lay about the middle of the said great meadow, and was called *Parson's Meadow*, which had been enjoyed since then by the rectors thereof; that, time out of mind, till the said year, the proprietor of the said parcel of ground called *Parson's Meadow* had used and enjoyed a way thereto yearly at all times as they had occasion to use the same; that, at the time of the said inclosure, the said ancient way was stopped up, and had been since disused, and that upon the said inclosure a way was agreed upon to the said meadow, but the land having got into the possession of the defendant *Earnesby*, he had blocked the same up, and refused the plaintiff his right of way to the said meadow, so that without the aid of this court the plaintiff was like to be utterly deprived of all benefit of the said *Parson's Meadow*, which was utter disinherison to the said church. The bill therefore prayed, that the plaintiff might be relieved, and the defendants compelled to set out a fitting way to the said meadow for the plaintiff, to be by him and his successors used and enjoyed for ever.

The defendant *Earnesby* denied, that before or about the year 1655 the owners of the said *Parson's Meadow* had used or enjoyed, or of right ought to use or enjoy a way, as well a horse way and foot way, as demanded by the bill, or that it was agreed about the time of the inclosure, or assented to by the defendant, that there should be a way; and he set forth the boundaries of his said lands, and admitted that the said meadow was inclosed, but what way belonged to it he knew not.

The other defendants also denied the way.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined; and, upon opening the bill, the defendant *Earnesby* and others answer; and, the defendant *Brown* not appearing by counsel, though duly served with a *subpoena*, as by affidavit appeared; and upon reading his said answer, and the depositions of divers witnesses taken in the cause;

IT IS ORDERED AND DECREED, that a commission shall be forthwith awarded, directed to commissioners, authorising them to view the several inclosed grounds of the defendants lying about the said piece of meadow called *Parson's Meadow*, and set out and allot to the said plaintiff and his successors, rectors of the said church, such way as may, with least prejudice to the defendants, be most convenient and fit to be used by the said plaintiff and his successors at all times in the year for carts, carriages, drifts, and all other necessary uses leading from a certain highway in *Caltborpe* aforesaid called *Lillbourne Road*, in, by, and through the lands of the defendants, or some of them, unto the close called *Parson's Meadow*, and back again from the said *Parson's Meadow* to the said highway; and the said commission-

ers, or any two or more of them, are to make their certificate thereof to this court, to the end the way so to be allotted and set out for the plaintiff and his successors by the said commissioners, may by the decree of this Court, be for ever hereafter used and enjoyed by the plaintiff and his successors, rectors of the said church, and his and their tenants, farmers, servants, and agents.

And to what concerns the defendant *Brown*, this order to oblige him also, unless cause to the contrary be shewed, he first paying five pounds costs before he is heard; but on the twenty-second of *May* the above order was made absolute against *Brown*.

In pursuance of which decree, a commission was accordingly awarded under seal of this Court, directed to commissioners named on the part of the plaintiff and the defendants; who, in pursuance of the power to them given by the decree, did, upon the ninth day of *April* last past, make their certificate to the Court as set forth in this order.

Upon reading the said decree and order to revive, and also the said certificate, and no counsel attending on behalf of the defendants to alledge any thing against the said commissioners' certificate,

IT IS THEREUPON THIS DAY FINALLY ORDERED AND DECREED, that the aforesaid certificate of the said commissioners shall be, and is hereby ratified and confirmed; and that the said plaintiff and his successors, rectors of the said church of *Calthorpe*, his and their tenants, farmers, servants, and agents, shall for ever hereafter have free liberty at all times in the year to pass and repass with their carts, carriages, drifts, and all other necessary uses, by, through, and over the several, aforesaid ways in the certificate set out and allotted to be the most convenient and fit way to be by them used as aforesaid, without costs on either side.

Cave
against
EARNESBY
AND OTHERS.
and order. the
commissioners to
certify the same,
in order that the
said right of way
may be esta-
blished.

The commi-
sioners certify
accordingly.

The way to
Parson's Meadow
decreed.

ABBOTT *against* HICKS.

Gloucestershire, 25th June 1694.

TRIN. TERM,
6. WIL. & MAR.

THE bill stated, that about twelve years since the plaintiff was presented, &c. into the rectory and parish church of *Whitcombe Magna*, in the county of *Gloucester*, and entitled to all tithes; that the defendant, being possessed of a wood containing above half of the parish, and consisting chiefly of beech, hazle, maple, ash, and fallow, began, about twelve years since, to fell the same, and hath continued yearly so to do, the wood of which he hath converted, in great quantities, into charcoal, and

The rector of
Whitcombe Mag-
na, in *Glouce-*
stershire, claims
tithes of beech,
hazle, maple,
ash, and fallow
wood.

ABBOTT
against
HICKS

and sold the rest for fuel and firing, the tithe whereof was yearly worth one hundred pounds.

The defendant says they are ancient trees and used for timber, and therefore tithe free.

The defendant insisted, that the wood consisted chiefly of oak, ash, and beech trees, and was upwards of two hundred years old; that the trees grew from the root, and not from any stock or shrub, and were generally converted into and used as timber, and therefore that he ought not to pay the tithe thereof.

An issue to try whether *beech* is considered timber.

A trial at law was directed upon this issue, "Whether *beech*, within the parish of *Whitcombe Magna*, is accounted timber, or not?"

Verdict for the defendant.

The issue was accordingly tried by a special jury, and a verdict passed for the defendant.

And, as to *beech*, the bill dismissed.

In the month of *April* 1695 an order was then pronounced, that the bill, as to the plaintiff's demand of beech wood, should be dismissed.

The plaintiff claims tithes of maple, ash, and fallow.

But the plaintiff's counsel insisted there were great quantities of maple, ash, and fallow, growing in the said wood, which was titheable to the plaintiff; and therefore an account was directed as to the tithe of the said maple, ash, and fallow, and other titheable wood growing in the said wood not discharged of tithes by the verdict.

Cause reheard.

On the thirtieth of *October* 1696, and before the said order was entered, the cause was ordered to be reheard upon the petition of the plaintiff, but not to impeach the verdict; and on the nineteenth of *November* 1696, upon opening the pleadings, and reading the depositions of several witnesses on both sides, and after long debate of the matter, it is ordered that the bill be,

Bill, as to *beech*, again dismissed.

and is hereby dismissed as to beech wood, unless the plaintiff can shew better cause.

The cause came on the twenty-seventh of *November* 1696 to be further heard; when, upon hearing counsel, and reading several depositions, and on long debate,

Bill as to all matters dismissed.

IT IS FINALLY ORDERED AND ADJUDGED BY THE COURT, that the said bill be, and is hereby dismissed as to all and every matters and things therein contained, but without costs.

EDW. WARD.
NICH. LECHMERE.
JOHN BLENCOWE.
LITTLETON POWIS.

BIGGS *against* MARTIN and LETTS.*Kent, 18th June 1694.*TRIN. TERM,
6. WIL. & MAR.

THE plaintiff, as farmer and occupier of the rectory or parsonage of *Bromley*, in the county of *Kent*, stated, that the defendants were inhabitants, and, in the years 1691 and 1692, occupied several farms, and agisted dry and unprofitable cattle, and cut wood and broom, and made the same into bavins, and disposed thereof without setting out the tithes.

The rector of *Bromley*, in *Kent*, claims the tithes of broom made into bavins, of the lops and tops of old timber pollards, and of the hedge rows.

wood growing in

The defendant *Letts* set forth several customs within the said parish payable in lieu of tithes, and averred that he had paid for all his tithes, except four shillings and fourpence for the small tithes for the year 1692; and he denied that any tithes ought to be paid for *broom made into bavins*.

The defendants say no tithe is due for the things demanded.

The defendant *Martin* confessed, that he had not paid his rate tithes, but denied that any tithe was due for the tops or lops of *old pollard timber trees* or dotards, or for wood growing in hedge rows.

THE COURT, upon reading several depositions, and hearing what could be alledged on both sides, ORDERED AND DECREED, that the defendants do pay to the plaintiff what, upon the account to be taken before the deputy remembrancer, shall appear to be due for the tithe of *broom made into bavins*; for the tithe of the lops and tops of *old pollard timber trees* and dotards; and for wood growing in hedge rows, together with such customary payments as are in arrear and due for the years aforesaid.

The tithes of the said several articles decreed to be paid.

GRANT *against* BROWN and Another.*London, 25th June 1694.*TRIN. TERM,
6. WIL. & MAR.

THE plaintiff stated, that *Mrs. Jevan*, at her death in the year 1691, and for twenty-five years before, was seised in fee of the parsonage or rectory of *Saint Dunstan in the West*, in the city of *London*, and county of *Middlesex*; and entitled to tithes, &c.; that she made her will in *September 1691*, and devised the said rectory to the plaintiff, and made him sole executor; that he proved the said will, and is legally entitled to the said impropriation, and to all arrears of tithes due in her life time; that the statute 37. *Hen. 8. c. 2.* enacts, "that the citizens and inhabitants of the city of *London* should yearly, without fraud, pay of every ten shillings rent of all houses, shops, cellars, &c. sixteen pence halfpenny; and for every twenty shillings the sum of two shillings and ninepence;" that the defendants

White Friars is within the liberties of the city of *London*, and was so when the 37. *Hen. 8. c. 2.* was passed; but it was not within that part of the parish of *St. Dunstan in the West* which is in the city of *London*.

GRANT
against
BROWN AND
ANOTHER.

were for several years in the lifetime of *Mrs. Yevan*, and also since, tenants, inhabitants, and occupiers of several houses, shops, and cellars, within that part of the parish that is within the city of *London*. The bill therefore prayed to have an account of what houses the defendants severally held, what time they had occupied the same, and what rents they had paid for the same.

The defendants set forth and specified the particular houses by them occupied, and the rents and values of the same, and insisted that all the said houses were situate in the precinct called *White Friars*; that the said precinct was no part of the city of *London* at the time of making the decree and act of parliament in the thirty-seventh year of *Henry the Eighth*; but that the same was made part of the liberty of the city of *London* by the late *King James the First*, and subjected to the jurisdiction thereof by grants and letters patent, and therefore the said act and decree did not extend to or concern the defendants. They also insisted, that the precinct of *White Friars* was not within the parish of *Saint Dunstan in the West*, or the rectory or titheable places thereof, and denied that any rate or *modus* for the tithe was ever payable or paid by them to the parson of the said parish.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and, upon reading several depositions on both sides, as also copies of several ancient records and grants from THE CROWN, a trial at law was directed to be had before THE CHIEF BARON (a) upon these two issues, viz.

FIRST, Whether the precinct of *White Friars* was within the liberty of the city of *London* at the time when the act was made in the thirty-seventh year of *Henry the Eighth*?

SECONDLY, Whether the precinct of *White Friars* be within the parish of *Saint Dunstan in the West*?

The issues were accordingly tried, and the one issue found for the plaintiff, and the other for the defendants; but a new trial upon the said issues was ordered on payment of costs to the defendants; on which trial, before a special jury, it was found upon the first issue, "That *White Friars* was within *London* at the time the statute was made." But upon the second issue, "That the precinct of *White Friars* was not within the parish of *Saint Dunstan in the West*."

The cause came on to be further heard on the third of *June* 1694; when, upon reading the said orders and *postea*, and hearing counsel for the defendants, it was ordered that all the defendants should be absolutely dismissed from the said bill; but before the said order was entered, the plaintiff's counsel, on the

(a) The cause was tried before MR. BARON LECHMER, the office of Chief Baron being at that time vacant.

eighth of *June* instant, alledging the cause was brought on sooner than expected, it was ordered to come on this day; and on full debate,

GRANT
against
BROWN AND
ANOTHER.

IT IS ORDERED BY THE COURT, that the said bill be, and is hereby dismissed.

EDW. WARD.
JOHN TURTON.
JOHN POWELL.

COLLEY *against* SMITH and Others.

Dorsetshire, 6th July 1694.

TRIN. TERM,
6. WIL. & MAR.

THE plaintiff, as ector of *Hampreston*, in the county of *Dorset*, claimed all manner of tithes therein, and stated, that the defendant *Beibyn*, for five years past, had occupied closes called *the Woods*, *the Lower Mead*, and *Garland's Gate*; that the defendant *Smith*, in the year 1692, occupied a close called *Butt Close*, and that the said defendants sowed the same with clover, and mowed and made the same into hay twice in the said year; and therefore the tithe of the *second math* ought to have been paid to the plaintiff.

The rector of *Hampreston*, in *Dorsetshire*, claims the tithe of the herbage in a close called *the Woods*, and of the *aftermath* of clover grass in *Butt Close*.

The defendants, by their answer, confessed that they jointly or severally occupied and enjoyed the said several closes in the said years (excepting *the Woods* for the year commencing at *Lady Day* 1692), and that they kept thereon in each of the said years barren and unprofitable and other cattle; that the tithe of the herbage for feeding and depasturing the barren and unprofitable cattle in the closes called *the Woods* ought to be paid to the impropriator of a portion of tithes within the said parish, to which the tithes of *the Woods* belong, and not to the plaintiff.

The defendants say the tithes of *the Woods* belong to the impropriator of a portion of the tithes;

The defendant *Smith* confessed, that he mowed the said clover in the *Butt Close* twice in the said year, and made the same into hay, and averred that he paid tithe of the first math; and that there is a custom in the said parish where the owner of meadow cuts and makes the *first math* into grass cocks, and pays the parson the tenth thereof, he is discharged of the tithe of the *second math*.

and that there is a custom which exempts the *aftermath* from tithe.

The plaintiff replied; the defendants rejoined; and witnesses were examined; and, upon reading the depositions, and an indenture made the eighth of *April* in the thirteenth year of *James the First*, being a conveyance of a portion of tithes in *Hampreston*, under which the impropriator claims the said portion of tithes; and on full debate of the matter; forasmuch as it appeared to the Court that the plaintiff and his predecessors have always quietly had and received satisfaction for the tithe of the herbage for the feeding and depasturing barren and unprofitable cattle

But the Court, on hearing the evidence, are of opinion, that the tithe of both the herbage and the *aftermath* belong to the plaintiff;

COLLEY
against
SMITH
AND OTHERS

in the said closes called *the Woods*; and for that it doth not appear that the impropiator, and those under whom he claims, ever received the tithe herbage in the said closes, nor any small or other tithes, except corn and hay;

and decrees the
same accordingly.

THE COURT declared, that the tithe of the said herbage doth of right belong to the plaintiff, as rector of the said rectory; and that the tithes of the *second math* of clover grass in the defendant's answer set forth ought to be paid to the plaintiff.

WHEREUPON IT IS ORDERED AND DECREED, that the defendants shall severally pay to the plaintiff the value of the tithes in arrear and demanded by the bill.

EDW. WARD.
JOHN TURTON.

TRIN. TERM,
6. WIL. & MAR.

SAYER against MUMFORD and Others.

London, 6th July 1694.

The plaintiff, as
lessee under *Ba-
liol College*, in
Oxford, claims
from the defend-
ants 2s. 9d. in
the pound on
their respective
rents in lieu of
tithes, pursuant
to the statute 37.
Hen. 8. c. 12.

THE bill stated, that the master and scholars of *Baliol College*, in *Oxford*, are seised in fee of the rectory or parsonage impropriate of *Saint Lawrence Jury*, in the city of *London*, and entitled to all tithes, oblations, ecclesiastical duties, and all customary and other payments in lieu of tithes within the said parish; that being so seised, they, by indenture dated the twenty-sixth of *March* 1692, demised all and singular the said tithes, and other ecclesiastical duties and payments to the plaintiff for twenty-one years, under the yearly rent of forty pounds, and seven shillings, payable, viz. to the master and scholars, twenty pounds seven shillings a-year; and to the vicar of the church, twenty pounds a-year; by virtue of which lease, he is entitled to have the said tithes and other ecclesiastical duties for a year and upwards, or else such payments in lieu of tithes as are by custom or common right, or by the decree made in the thirty-seventh year of *Henry the Eighth*, due to him; that, time out of mind, there hath been paid by the parishioners, inhabitants and occupiers of houses and other titheable matters within the said parish, to the proprietors of the said rectory, a customary pound rate for or in lieu of tithes, or else, according to the said decree, for every ten shillings rent, one shilling and fourpence halfpenny *per annum*; and for every twenty shillings rent, two shillings and ninepence *per annum*, and so above that rent, according to the said rate; that the defendants, or some other of the parishioners, have, for sixty years or upwards, been lessees of the said rectory under the said master and scholars, during which time great alterations were made in the buildings within the said parish by reason
of

of the great fire, so that the plaintiff cannot discover what the ancient tithes were, or of whom to demand the same; and they having got into their hands all the ancient books, terriers, and writings relating to the said tithes, do deny to pay the plaintiff any tithes, or any customary or other payments in lieu of tithes, or according to the aforesaid decree of two shillings and ninepence in the pound. The bill therefore prayed, that the defendants might discover what houses or other things titheable in the said parish they were possessors or occupiers of during 1692, and the time they were charged to be in arrear for their tithes, together with the yearly rents and values thereof, and what customary or other sums of money they have paid for, or in lieu of tithes, or have known to be paid by others, and that they may discover and deliver up the ancient books, &c. and pay the plaintiff their tithes or the customary rate pursuant to the decree.

SAYER
against
MUMFORD
AND OTHERS.

The defendants, by their answer, confessed the plaintiff's title to the tithes, but said they did not know of any customary rates for assessments or payments of tithes, or any sum of money in lieu thereof, or that any oblations, obventions, or other ecclesiastical duties had been paid, or were payable, other than in the assessments annexed to their answers, which were made by the statute 22. & 23. Car. 2. c. 15. intitled, an "An Act for the better settlement and maintenance of the parsons, vicars, and curates in the parishes burnt by the late dreadful fire." And the defendants set forth the yearly rents of their houses, and other things in their possessions, and confessed, that some of the inhabitants in trust for the said parish have been lessees of the said tithes upon several leases for the time in the bill mentioned, the last whereof, being made to the defendants *Caplin* and others, expired at *Lady Day* 1692; and that the churchwardens had usually collected the said tithes, and that they are indebted to the plaintiff for the sum rated in the assessments upon their houses from the end of the said lease, which they were ready to pay.

The defendants
plead the statute
22. & 23. Car.
2. c. 15.

The plaintiff replied; the defendants rejoined; but no witnesses were examined; and upon reading an old book relating to the said tithes in 1643, and several old books and writings produced by both sides, and on full debate of the matter,

IT IS ORDERED AND DECREED (a), that the defendants shall respectively account to the plaintiff for the tithes of the several houses and other titheable matters in their possession, after the rate of two shillings and ninepence for every pound of the yearly rents or values thereof from the time the last parish lease expired, being at *Lady Day* 1692, to the time of exhibiting the

The defendants
ordered to pay
their tithes pur-
suant to 37. Hen.
8. c. 12.

(a) By *TURTON* and *POWELL*, *Barr.*

SAYEN
against
MUMFORD
AND OTHERS.
Costs.

saïd bill; and it is hereby referred to the deputy remembrancer to take the saïd account accordingly.

In pursuance of the saïd decree the deputy remembrancer made his report, dated the fifteenth of *October* last, and the cause, being in the paper, came on to be heard the twenty-fifth of *October* last, when upon reading the order and report and hearing counsel on both sides, it was ordered to stand over for the Court to consider of costs.

A rehearing
granted.

Upon the sixth of *November* instant, on an application by the defendant's counsel, and on reading a petition for a rehearing, and the plaintiff's counsel opposing the same, it was ordered that the cause should be reheard this day, and that the defendants should pay five pounds costs for the rehearing, together with three pounds costs for the last day's attendance.

On the fifteenth of *November* 1694, upon hearing Counsel; and on reading the saïd act of parliament made in the twenty-second and twenty-third year of *Charles the Second*; and also on reading the report and on full debate,

The former decree confirmed.

IT IS ORDERED AND DECREED by THE LORD CHANCELLOR (a) and THE BARONS (b), that the former decree, and also the report, shall be, and are hereby ratified and confirmed, and that the saïd defendants respectively pay to the saïd plaintiff the several sums reported due from them, with the plaintiff's costs, to be taxed.

(a) MONTAGUE, Chancellor. (b) NICH. LECHMERE, JOHN TURTON, and JOHN POWELL.

MICH. TERM,
6. WIL. & MAR.

UMFREVILLE against BATCHELOR and Others.

London, 25th *October* 1694.

The plaintiff, as executrix of her husband, claims tithes of *Saint Botolph Aldgate*, according to 37. Hen. 8. c. 12.

THE plaintiff, as executrix of the last will and testament of her late husband deceased, did, in *Trinity Term*, in the twenty-second year of *Charles the Second*, exhibit her bill against the defendants, to have two shillings and ninepence in the pound for tithes due in the life time of her late husband, he being owner and impropriator of the parish of *St. Botolph without Aldgate*, part of which parish lieth within the liberties of the city of *London*, and the other part in the county of *Middlesex*, and the defendant *Batchelor* being occupier of several houses within that part of the parish which lieth within the liberty of the city of *London*.

The defendant states the premises he holds.

The defendant by his answer stated, that for the time demanded by the bill, he had been occupier of one house in *Rose and Crown Court*, in *Houndsditch*, and of another house in *Covent Garden*,

Garden, otherwise called *Gravel Lane*, within that part of the parish which lieth within the liberty of the city of *London*.

UMFREVILLE
against
BATCHELOR
AND OTHERS.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on the part of the plaintiff ; and, upon opening the bill, and reading an affidavit of the service of *subpœna* to hear judgment, and reading the answer, and no counsel appearing for the defendant,

THE COURT (a) ordered, that the defendant shall satisfy the plaintiff two shillings and ninepence in the pound, according to the 37. *Hen.* 8. c. 12. for the house in *Rose and Crown Court*, in *Houndsditch*, and in *Covent Garden*, otherwise *Gravel Lane*, in that part of the said parish of *St. Botolph without Aldgate*, which lieth within the liberties of the city of *London*, for the time demanded by the bill (b).

Tithes decreed,
pursuant to the
statute 37. *Hen.*
8. c. 12.

(a) MONTAGU, *Chancellor*, LECHMERE, *Baron*.

1694 p. 332 ; and the Attorney General v. Brewster, post. Easter Term, '4. Ann. where the question appears to have been finally determined.

(b) See *Umfreville v. Camplon*, post. 26th November 1694, p. 329. ; *Hollingsworth v. Umfreville*, post. 29th November

GARTH against STOKES.

MICH. TERM,
6. WIL. & MAR.

Wiltshire, 5th December 1694.

THE vicar of *Kewell*, in the county of *Wilts*, states, that the defendant, for fifteen years past, had occupied a farm and lands called *Weeke Lease*, in the said parish, and fed and depastured such lands with dry and unprofitable and fat cattle, for which he ought to have paid agistment tithes of two shillings in the pound yearly, and that he had, for the same time, mowed eighteen acres yearly of meadow, for which he ought to have paid eightpence an acre for the aftermath or grafs, and for the depasturing and feeding of such land.

The farm called *Weeke Lease*, in parish of *Kewell*, in the county of *Wilts*, pays a *modus* of 13s. 4d. a-year, in lieu of all vicarial tithes.

The defendant said, that about sixteen years since, and before he first rented the said farm, there was a *modus* of thirteen shillings and fourpence a-year payable to the vicar for all manner of tithes of the said farm and lands, and that his landlord did undertake and agree with him to answer the same ; and he insisted on the said *modus*.

Upon reading the proofs taken in the cause, and a receipt under the plaintiff's hand dated in *October* last, which the plaintiff gave to the defendant's landlord *Mr. Blagden* ;

IT IS ORDERED AND ADJUDGED, that upon the defendant's paying to the plaintiff the arrears of the *modus* of thirteen shil-

lings

GARTH
against
STOKES.

lings and fourpence now due, the bill, as to the said farm called *Weeke Lease*, shall stand dismissed, with costs.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

MICH. TERM,
6. WIL. & MAR.

NORTHLEIGH *against* COLLARD.

Essex, 6th December 1694.

The impropria-
tor of *Waltham-*
flow, in *Essex*,
claims tithe of
the wood called
the Sale.

THE bill stated, that the plaintiff, for three years last past, had been farmer of the impropriation of *Walthamflow*, in the county of *Essex*, and is entitled to the tithes of corn, grain, hay, and wood, yearly arising, &c. therein; that, in the years 1663 and 1694, the defendants held several acres of woodland and underwoods, and particularly the wood called *the Sale*, part of which said wood was felled and cut in the years aforesaid, containing one third part thereof; that several trees of hornbeam, maple, willow, fallow, prickwood, and bushes growing within the said wood, were lopped and topped in the years aforesaid; and that with the wood arising therefrom the defendants made faggots and bavins, and sold the same without setting out the tithe thereof, or making any satisfaction for the same.

The defendants
say, that the
wood felled is
timber, and tithe
free.

The defendants said, that they have known all the said coppices, groves, and wood-grounds several times felled, and never knew any tithes paid for the same; that they are occupiers of the wood called *the Sale*, and have cut several pollard trees there, and made faggots and bavins thereof, and sold the same without setting forth the tithes thereof, or paying any satisfaction for the same, for that no tithe is payable for the same, they not being subject to pay tithes; and they set forth their quantities and values.

The tithes, ex-
cept of the lop-
pings of oak pol-
lard, decreed.

THE COURT declared, the defendants ought to account with the plaintiff for the tithes of the wood in question, except for the lops of oak pollards, and except for the standills called *Black Coates*, and *White Coates*, they being timber.

MICH. TERM,
6. WIL. & MAR.

WILBRAHAM *against* KINGSMAN and Others.

Essex, 6th December 1694.

The rector of
Febbing, in *Essex*,
claims tithes of
certain farms.

THE rector of *Febbing*, in the county of *Essex*, claims all tithes arising therein, and states, that the defendant *Kingsman* is owner of three farms called *Great Elford*, the *Oil Mill*, and *Reedham*; and had been owner of a fourth farm called *Little Elford*; and that, possessing and having possessed the said farms, he refuses to discover his tithes.

The defendants *Kingsman* and *Newport* denied that they were owners of *Little Elford* farm; but *Kingsman* confessed that he was owner of the other three farms, and that, for the year ending at *Michaelmas* 1689, he had paid the plaintiff his tithes of all the said farms, and also for the year 1690. They also stated, that the said three farms were overflowed in the month of *December* 1690; and they admitted, that in 1691, they put on the lands called *Great Elford* several unprofitable cattle: and they set forth their tithes; but they disclaimed all title whatsoever to the four farms.

WILBRAHAM
against
KINGSMAN
AND OTHERS.

Two of the defendants confessed occupying the farms.

THE COURT ordered and decreed, that the plaintiff shall be paid the tithes of *Great Elford*, the *Oil Mill*, and *Reedham* farms, for the two last years in the bill charged, (the plaintiff being willing to abate for the tithes of the said farms, for the half year ending *Lady Day* 1691, wherein the inundation happened).

Tithes decreed.

And as to the tithes of the lands in *Little Elford* for 1691 and 1692, the deputy remembrancer is to report, whether the defendant *Saunders* occupied the same in the said years.

The deputy remembrancer accordingly made his report, dated the thirteenth instant, to which the defendants *Kingsman* and *Newport* put in exceptions, and upon reading the decree, the report, the exceptions, and the depositions, and on full debate, the Court mitigated the sum of ten pounds, ten shillings, reported due to the plaintiff, and payable by the said defendants, to the sum of seven pounds, ten shillings; and declared, that as the defendant *Saunders* was a trespasser upon the lands of *Little Elford* farm, no tithes ought to be paid by him for the same (a).

The sum reported due, mitigated.

One defendant, being a trespasser on one of the farms, is dismissed.

IT IS THEREUPON ORDERED AND DECREED, that the defendants *Kingsman* and *Newport*, or one of them, shall and do forthwith pay to the plaintiff the sum of seven pounds, ten shillings, for their tithes, with moderate costs to be taxed; and that *Saunders* be dismissed without costs,

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

(a) See this point of the case reported by Rayner 76. from Lord Chief Baron Dodd's manuscript.

UMFREVILLE against CAMPION.

Middlesex, 26th November 1694.

MICH. TERM,
6. WIL. & MAR.

THE plaintiff, as executrix of her late husband, filed her bill in the thirty-second year of *Charles the Second* against

There is a modus of 5l. a quarter, payable for *Middlesex*.

Hooker's Rents, in *Nightingale Lane* and *Sun Yard*, in the county of the

UMFREVILLE
against
CAMPION.

the defendants to have an account of several tithes due in the lifetime of her late husband, he being impropiator of *Saint Botolph without Aldgate*, part in the city of *London*, and part in the county of *Middlesex*, and the defendants being occupiers of houses within the part which lieth in the county of *Middlesex*.

The defendants said that the several houses are part of *Hooker's Rents*, situated in *Sun Yard*, in the said parish.

The cause came on to be heard the twenty-fifth of *October* last, when an account was directed to be taken before the deputy remembrancer, but before the decree was entered, the defendants moved for a rehearing on the seventh day of *November* instant, and the same being ordered, the cause came on this day to be reheard.

Upon reading the depositions, and several ancient tithe books and accounts of collectors of tithes of the said parish, it appeared that there is a *modus* of twenty pounds a-year for *Hooker's Rents*, in *Nightingale Lane* and *Sun Yard*, in the said parish, viz. five pounds quarterly.

And upon reading a deed, dated the second of *March* 1630, made between *C. Godfrey* and *E. Hooker*; and several receipts under the hand of *S. E. Rawlinson*, formerly collector of the tithes of the said parish, and on long debate, counsel insisting on a trial at law, but the Court not thinking fit to grant the same;

IT IS ORDERED AND DECREED, that the former decree be ratified and confirmed, and that it be referred to the deputy remembrancer to take the said account, according to the said *modus* in lieu of tithes for the said premises, for the time the said defendants have severally and respectively held the same, at five pounds a quarter, in the lifetime of the said plaintiff's husband, and as charged in the bill.

MICH. TERM,
6 WIL.&MAR.

LAYFIELD against COWPER.

Southampton, 15th December 1694.

The rector of *Buriton*, in the county of *Hants*, claims the tithes of wood felled in *Ditchum Park*, and the *Hangers*.

THE bill stated, that the plaintiff, for four years last past, had been rector of the parish of *Buriton*, in the county of *Hants*, and entitled to all tithes both great and small; that the defendant was an inhabitant, owner, and occupier of wood, woodland, and woodground, therein, and had felled, cut down, and sold at least one hundred and fifty acres of great value, without setting out the tithes thereof, which were worth yearly twenty pounds.

The

The defendant said, that he is owner of several woodlands and wood grounds called *Ditcham Park*, and *the Hangers*, in which there grew many great oak, beech, and ash trees, which he cut down, out of which was cut several ton of timber, and the rest he converted into cord wood, and the lops and tops into faggots; that in the year 1690, he cut down several trees, and after the timber lengths were cut off, he converted the remainder into cord wood and faggots, and sold the same, and in the said year sold several hundred of faggots, and also cut down several hedge-rows, and sold the same.

LAYFIELD
against
COWPER.

The defendant states the kind of wood felled, and the use to which it was applied.

IT IS ORDERED AND DECREED, that the defendant shall pay to the plaintiff tithes for the hedgerows, willows, maples, hazels, and all other underwood by him felled and cut down in the said years, or the value thereof; and as to the stemmers felled and cut down by the defendant in the said years, the deputy remembrancer is to report the same specially, with the values of the tithes of the same, that in case such stemmers shall be adjudged titheable, the plaintiff may receive satisfaction for the same.

The tithes of the underwood decreed, and the stemmers to be reported.

In pursuance to the said decree, the deputy made his report; to which report the defendant put in exceptions, as the said deputy had made the same *ex parte*.

The report excepted to.

Upon reading the decree and report, and opening the exceptions, and also reading several depositions, and upon long and serious debate, and due consideration had of all the said matters;

THIS COURT is of opinion, and doth declare, that no tithe ought to be paid to the plaintiff of *the Great Beech Wood* cut by the defendant in the said years, the same appearing to the Court to be maiden trees, and not stemmers, and that they are timber and useable for timber uses, and that therefore the bodies and lops and tops of such trees are privileged by law from the payment of tithes.

The Court of opinion, that they are maiden trees and timber, and therefore, with their lops and tops, tithe free.

But it appearing also to the Court, that the defendant had cut some underwood in the said several years, the tithes whereof were worth about three pounds, this Court doth further order and decree, that the said report be, and is hereby set aside, and that the said defendant do pay to the plaintiff twenty pounds, as well in full satisfaction and discharge of all the tithes of the small underwood in question, as of all costs and charges payable to the plaintiff, without prejudice to, or including any part of the defendants tithes of the said *Great Beech Wood* therein.

Costs.

EDWARD WARD.

HOLLING-

MICH. TERM,
6. WIL. & MAR.

HOLLINGWORTH *against* UMFREVILLE, Knt.

London, 29th November 1694.

The chaplain of the parish of *Sr. Botolph Aldgate*, in the city of *London*, is entitled to a pension of 8l. a-year, and also to 40s. yearly, for bread and wine.

See the case of the Attorney General *v. Brewster*, *Easter Term*, 4. Anne.

THE bill stated, that the rectory and church of *Saint Botolph without Aldgate*, in *London*, and the tithes thereto belonging, were formerly part of the lands and possessions of the priory of the church of the *Bishop of London*, and, being appropriated upon the dissolution of the priory, came to and was vested in THE CROWN; that previous to the said dissolution, there was a yearly sum of ten pounds paid by the prior to a chaplain, as a pension or stipend, to celebrate divine service in the said church, and to provide bread and wine yearly there; that subsequent to such dissolution, the several kings and queens of this realm did, under their great seal, appoint a chaplain accordingly to officiate in the said church, who of right had, and was entitled to the said ten pounds; that *King James the First*, by his letters patent dated the twenty-fourth of *May*, in the seventh year of his reign, granted to *F. Morris* and *F. Phillips*, and their heirs, the said rectory and tithes, let to *G. Puttenham* at twenty-two pounds a-year, exclusive of the said ten pounds; that in the said grant, the advowson, donation, and right of patronage of all churches, vicarages, and other ecclesiastical benefices incident or belonging to any part of the premises, was excepted and reserved to the king and his successors, to hold to them and their heirs, as of the manor of *East Greenwich* by fealty only, in free and common soccage, under the yearly rent of twenty-two pounds, payable at *Michaelmas* and *Lady Day* equally; that the said *Morris* and *Phillips* thereby covenanted to pay yearly the sum of eight pounds for a chaplain to officiate in the said church, and also forty shillings for bread and wine and other necessities; that the said rectory and tithes were since, by mesne conveyances, vested in the defendant; that the office of chaplain or curate of the said church being void, and the disposal thereof belonging to the late *King Charles the Second*, he, by his letters patent dated the eighteenth of *August*, in the thirty-third year of his reign, granted the same to the plaintiff for his life, with all the profits thereunto belonging, by which grant the plaintiff became entitled to the said office, and ought to have received the said eight pounds and forty shillings yearly, he having duly served the cure there, and found bread and wine, and that the defendant ought to have paid the same yearly, and all arrears thereof; but that he refused to pay the same, and disputed the king's right to appoint a curate to the said church,

The defendant admitted that KING JAMES THE FIRST was so seised and made such grant, but said, that according to the intention of the said letters patents, the said exception did not

HOLLING-
WORTH
against
UMFREVILLE.

not affect the rectory of *Saint Botolph*, but did relate to other churches, and that there was no advowson or right of patronage, the said rectory being impropriate; that there never was any vicar, [or vicarage, or advowson of any vicarage, within the said church, but that the chaplains, who celebrated divine service there, have been bare stipendiaries, put in by the owners of the same, and removed at the owner's pleasure; and that by such exception the right of putting in a chaplain there was never reserved to THE CROWN, but belonged to the patentees, and others claiming under them. He further stated, that he was seised of the said rectory during the time in the bill mentioned, and as he conceived, might, by reason thereof, put in or remove any chaplain, qualified to officiate in the said church, at his pleasure. He denied, that KING CHARLES THE SECOND had any lawful power to grant the said curacy to the plaintiff, or that the plaintiff had ever any good title thereto, he not being nominated thereto by the defendant; that he, the defendant, had the right, and had appointed another to officiate, and had desired the plaintiff to deliver the same up and to forbear officiating further therein, which he refused to do; that thereupon he had brought an ejectment for recovery of the possession of the said church, as part of the glebe of the said rectory, and obtained judgment thereon, and he insisted that he ought to be at liberty to retain the possession, in order to place another chaplain there. He believed the eight pounds *per annum*, were duly paid to such chaplains as had been rightfully placed there, but insisted that of right it was not payable to a mere intruder, as he conceived the plaintiff was, and is, but that, to avoid trouble, he had paid the said sum to the plaintiff from the time of his first officiating there, until *Lady Day* 1688; and he confessed to have paid the forty shillings *per annum* for bread and wine until 1690. He denied, that he had any vouchers to evidence the payment of the said sums, except the churchwardens receipts; he said, that ten pounds *per annum* had been allowed for a stipend to a chaplain, and for bread and wine, which did not import that the whole ten pounds *per annum* was paid to the chaplain, or if it did, that it only related to what was done by the former lessee of the crown, whereas he could only be charged by the words of the said letters patent, for the then future time, which did not appoint the payment thereof to the chaplain as advised, and knew not that at any time whatsoever ten pounds was paid to the chaplain to celebrate divine service in the said church, and for providing bread and wine. He confessed, that he claimed the rectory by and under the grant and title to *Norris* and *Phillips*, and refused to set forth the mesne conveyances under which he claimed. He said, that he knew not whether the plaintiff ever provided bread and wine or other necessaries for the said church, or did any thing more than say divine service there.

The

HOLLING-
WORTH
against
UMFREVILLE.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel fully on both sides, and reading the aforesaid grant to the plaintiff in *Charles the Second's* time of the said office of chaplain or curate of *Saint Botolph's, Aldgate*, and the answer, and several depositions of witnesses taken in the said cause,

IT IS ORDERED AND DECREED BY THE COURT, that the defendant shall forthwith satisfy and pay to the plaintiff all the arrears of the said yearly pension of eight pounds *per annum* due and in arrear to the plaintiff from *Lady Day 1688* to *Michaelmas* now last past, being six years and a half, amounting to fifty-two pounds, together with costs, to be taxed by the deputy remembrancer of this Court.

HILARY TERM
6. WIL. 3.

ROTHWELL against GRATWICK and ROTHWELL,
AND
BISHOPP against ROTHWELL.

Sussex, 4th February 1694.

The vicar of *Henfield*, in *Sussex*, is entitled to the great tithes of *Eaton's Farm*, and to the small tithes of *Catlands* and *Hollands*, and to a load of hay, a quarter of wheat, and the running of a horse yearly in *Park Lands*, or to six pounds a-year instead thereof, in lieu of tithes.

THE plaintiff *Rothwell*, as vicar of *Henfield*, in the county of *Sussex*, demanded the great tithes arising upon a farm called *Eaton's Farm*, in the said parish, for five years past, which lands had been occupied by the defendant *Gratwick*.

The defendant *Gratwick* in his answer admitted, that he had been occupier of the said farm for the time aforesaid, but said, that the great tithes arising therefrom, if payable, belonged to the bishop of *Chichester*, or to the other defendants *the Bishops*, or one of them, or those under whom they claimed as lessees of the great tithes of the said parish.

The plaintiff also demanded of the other defendants the *small tithes* in kind arising out of certain lands called *Catlands* and *Hollands*, and also a load of hay, one quarter of wheat, and the running of a gelding or mare yearly in certain lands called *Park Lands*, in the said defendant *Bishopp's* possession, or six pounds in money yearly for *Park Lands*, in lieu thereof, and to have satisfaction for the same, as well in the life-time of the defendant *Bishopp's* ancestors, as for the duties arising in the times they or any of them were possessors thereof, to the time of the filing of the present bill.

The defendants *Sir Cecil Bishopp* and *C. Bishopp* by their answers admitted, that the said *Henry* and *Edward Bishopp*, deceased, had been occupiers of the last mentioned lands for the time in the bill mentioned; but denied the plaintiff's right to the tithes, or to any recompence for the same; and confessed assets.

I

Upon

Upon opening the bill, and reading the answer of the defendant *Bisbopp*, and no counsel appearing for the defendant *Gratwick*, and upon reading an order whereby he undertook to appear *gratis*, and also his answer, and an ancient terrier, made in the year 1685, whereby the great tithes, and small tithes in their proper kinds, are said to belong to the vicar of *Henfield* for the time being; and also on reading several depositions taken on the part of the plaintiff, and hearing what could be alledged by counsel on both sides;

ROTHWELL
against
GRATWICK
AND
ROTHWELL,
AND
BISHOPP
against
ROTHWELL.

THE COURT (a) was of opinion, that the great tithes of *Eaton's Farm*, in the defendant *Gratwick's* possession, ought to be paid to the plaintiff *Rothwell*, as vicar of *Henfield*, and that the said tithes did not belong to the *Bisbop of Chichester*, or his farmers or lessees; and that the small tithes of the lands called *Catlands* and *Hollands*, and the said hay, and quarter of wheat, and running of a gelding or mare in the said lands called *the Park Lands*, or six pounds in money yearly for the same, ought to have been paid or allowed to the plaintiff by the other defendants, *the Bisbop's*, or one of them, for the time demanded by the bill.

(a) The Court consisted of LECHMERE; the office of Chief Baron being at this time vacant.

DIXIE against DEACON and Others..

Leicestershire, 11th February 1694.

HILARY TERM
6. WIL. 3.

THE rector of the village of *Barlston*, in the parish of *Market Bosworth*, in the county of *Leicester*, claimed tithes both great and small for the year 1692.

The defendants insisted, that tithes in kind were not payable for their lands in *Barlston*, but that a *modus* of sevenpence three farthings an acre had been yearly, time out of mind, paid to the rector of *Market Bosworth*, in lieu of all tithes arising or happening within the said township of *Barlston*.

An issue was directed to try, by a special jury, the *modus* as above stated; on which trial a verdict passed for the defendants.

THE COURT therefore ordered and decreed, that the defendants do pay to the plaintiff the said *modus* of sevenpence three farthings an acre for every acre of land they occupied in 1692 within the parish of *Market Bosworth* in lieu of all tithes; and that the plaintiff do pay to the said defendants their costs, to be taxed by *Tobias Eden, Esq.* the deputy remembrancer, which said *modus*, so as aforesaid due from the said defendants to the plaintiff for the said year, is to be deducted out of the said costs.

The land-holders of the village of *Barlston*, in *Leicestershire*, pay a *modus* of 7½d. an acre yearly to the rector of *Market Bosworth*, in the said county, in lieu of all tithes issuing out of their said lands.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.
POCOCK

HILARY TERM
6. WIL. 3.

Pocock *against* COLES.

Devonshire, 20th February 1694.

The rector of
Cheriton, in the
county of *Devon*,
claims tithes in

THE rector of *Cheriton Bisbopp*, in the county of *Devon*, claimed the tithes thereof. kind.

The defendants
state several *modus*
us payable and
paid to the
vicar.

The defendants insisted on several *modus* in lieu of their tithes in kind; viz. that twopence an acre for grass mown and made into hay is payable to the vicar in lieu of the tithes of the said hay; and also twopence yearly for each renewed cow in lieu of the tithe of milk of such cow; and sixpence for each calf in lieu of tithe calves; also for every tenement, in lieu of the tithes of apples, pears, and all other garden stuff and fruit, growing and renewing yearly within the said parish, one penny only; also an hearth penny payable for each tenement yearly for all wood, coppice, and underwood, cut down within the said parish. They said, that before this suit began, they severally tendered, and by their answer tender the plaintiff for all their tithes and customary payments as they are set forth and unpaid.

The bill dis-
missed.

Upon long debate of the matter, forasmuch as it appears by the defendants' proofs that the several and respective *modus* and customary payments insisted on by the defendants' answers have been always and constantly paid to the vicars of the said parish of *Cheriton Bisbopp* for the time being, and by them accepted in lieu and full satisfaction of the said several and respective titheable matters aforesaid; and for that the plaintiff could not produce any evidence that any of the said titheable matters were ever paid in kind to any vicar of the said parish;

IT IS ORDERED AND ADJUDGED, that the said defendants shall be, and hereby are dismissed of and from the said bill, and the matters and things therein contained, with moderate costs to be taxed by the deputy remembrancer, who is empowered to tax the same.

TURTON, *Baron*.
POWELL, *Baron*.

HILARY TERM
6. WIL. 3.

MORGAN *against* HOLT.

Radnorshire, 11th and 18th February 1694.

The rector of
Lanbaderne
Vawr, in *Rad-*
norshire, claims
tithes in kind.

THE scope of the bill was to have a discovery of what corn, grain, and other titheable matters, the defendant had within the parish of *Lanbaderne Vawr*, in the county of *Radnor*.

The

The defendants said, that they had paid all tithes due from them to the plaintiff, except the tithe of cows, for which there was and had been a custom to pay twelvepence yearly for every milch cow, and sixpence yearly for every barren cow, in lieu of all tithes arising from or by reason of the said cows, which they are ready to pay according to the said custom.

MORGAN
against
HOLT.

The defendants set up a *modus* of 12d. for a milch cow, and 6d. for a barren cow, in lieu of tithes.

The plaintiff's counsel insisted, that eighteen cheeses were of right due and accustomed to be paid yearly by every inhabitant within the said parish, that kept a cow or cows within the said parish, to the rector, his farmer, or tenants, in lieu of the tithe of all cow or cows.

The plaintiff insists that 18 cheeses are due in lieu of milch cows.

The Court ordered a trial at law on the following issue, "Whether a *modus* of twelvepence for every milch, and sixpence for every barren cow, is, and for time out of mind hath been accustomed to be paid yearly by every inhabitant of the parish of *Lanbaderne Vawr* to the rector of the said parish, his tenants, or farmers of the tithes for the time being, in lieu of all tithes arising from or by reason of the said cows, or not?"

An issue directed to try the *modus* set up by the defendants.

In pursuance of which order, a trial was had upon the afore-said issue, and a verdict therein passed for the plaintiff.

Verdict for the plaintiff.

The cause coming on to be heard upon the *postea*,

IT IS ORDERED AND DECREED, upon reading the said order and *postea*, that the defendants shall likewise respectively account with, satisfy, and pay to the plaintiff the value of eighteen cheeses from each of them due for the years aforesaid.

The defendants decreed to pay the 18 cheeses in lieu of tithes.

WARD, Chief Baron.
LECHMERE, Baron.
TURTON, Baron.
POWIS, Baron.

SMELTER *against* BRIDGES.

Kent, 7th February 1694.

HILARY TERM
6. WIL. 3.

THE bill stated, that the plaintiff, for twenty-two years last past, had been vicar of *Saint Nicholas Atwade*, in the county of *Kent*, and entitled to all manner of small and vicarial tithes, and all customary payments belonging thereto; that the defendant *Bridges*, for twenty-one years past, had been occupier and possessor of a messuage, with the appurtenances, and several acres of upland and marsh land, and had great numbers and quantities of titheable matters, the tithes whereof were worth twenty pounds a-year; that the defendant *Phillpot* had been occupier for several years of upland and marsh land in the said parish, and had paid no tithes.

The owners of meadow and pasture lands in the parish of *Sr. Nicholas Atwade*, in the county of *Kent*, whether the lands be marsh or uplands, pay 4d. an acre to the vicar in lieu of the tithes thereof.

SMELTER
against
BRIDGES.

The defendants insisted, that, time out of mind, the plaintiff and his predecessors had received for marsh lands, pasture, and meadow lands in the said parish, the yearly sum of fourpence an acre, in lieu of all manner of vicarial tithes; that if any thing more had been paid, it had been paid out of kindness; that in the nineteenth year of *Charles the Second*, *Mr. Chewney*, vicar of the said parish, filed his bill in this court against several of the parishioners for several sorts of tithes, and the defendants, by their answer, insisted on the said custom of fourpence an acre, in lieu of tithes; that the cause was heard in *Michaelmas* 1661, and the bill was dismissed.

It appearing to the Court that fourpence for every acre of marsh land, pasture, and meadow, within the said parish, had, time out of mind, been paid by the parishioners and accepted by the several vicars for the time being of the said parish, in lieu and full satisfaction of and for all small and vicarial tithes whatsoever arising and happening not only within and upon the said marsh lands, pasture, and meadow, but also in and upon the uplands and elsewhere within the said parish.

IT IS ORDERED, that the said bill be, and the same is hereby dismissed without costs; but if the plaintiff shall hereafter file any more bills, he is to pay the taxed costs of this suit.

LECHMERE, *Baron.*
TURTON, *Baron.*
POWELL, *Baron.*

HILARY TERM,
6. WIL. 3.

GOODALL against PERKINS.

Berkshire, 4th February 1694.

The rector of *Padworth*, in *Berkshire*, claims the tithes of alderne poles and faggots.

THE rector of *Padworth*, in the county of *Berks*, charged that the defendant, for several years past, had occupied and possessed twenty acres of coppice wood and five hundred poles of hedge-rows, and had cut and carried away about eighty loads of the wood growing there; the tithes whereof were worth eight pounds, which the defendant refused to pay.

The defendant says the alderne poles are above 20 years growth, and accounted timber, and that the faggots were to be burnt in his house.

The defendant confessed that he had been for several years past owner and occupier of a coppice wood called *Brickcroft*, and certain lands called *Wallingford Lands*, and of some hedge-rows within the said parish; that in the years 1687 and 1688 he cut and carried away from the said coppice alderne poles; and he set forth the quantities and values for several years following; that he had cut several hundred of faggots from the same coppice, which he used for fire wood in his own house; and he insisted that he was not obliged to pay any tithes, either for the alderne poles or for the faggots, for that the alderne poles were all above twenty years growth, and of that age and quality have been, and are usually

usually reckoned and esteemed as timber, and measured by timber measure; and the said faggots were not titheable, in regard they were part thereof burnt, and the rest intended to be burnt in his own dwelling-house, and that for wood burnt in the houses of the owners tithes were not due.

GOODALL
against
PRANKINS.

THE COURT declared their opinion, that alderne poles were not timber, but were titheable to the plaintiff.

The Court of opinion, that alderne poles are not timber;

And in regard it appeared to the Court, that the defendant had not any house of husbandry within the said parish of *Padworth*, but that the said underwood and hedge-rows, made into faggots, were carried to the defendant's house, being out of the said parish, and there burnt, the Court did also declare, that tithes were due to the plaintiff for the same.

and the faggots, not being used in the parish in husbandry,

IT IS THEREFORE ORDERED AND DECREED, that the defendant shall account with and satisfy the plaintiff for the value of the tithes of all the said alderne poles and underwood by him felled and cut within the said parish of *Padworth* demanded by the bill.

the tithes of both are decreed.

CUTLOVE *against* CAPON and Others.

Suffolk, 7th May 1695.

EASTER TERM,
7. WIL. 3.

THE bill stated, that ever since the year 1677 the plaintiff had been elected and settled *stipendary minister* of the parish church of *Saint Mary Tower*, in *Ipswich*, and had faithfully discharged the duty thereof, whereby, for all the time, he had been entitled to, and ought to have received the perquisites and profits appertaining thereto; that a statute made in the thirteenth year of *Queen Elizabeth* recited, "That there were divers parishes within the said town and suburbs not endowed, or so poorly endowed as not to be able to maintain convenient ministers;" that the said parish of *Saint Mary Tower* was one of the parishes wherein provision was made by the said act, there being no settled endowment for the minister thereof (except some customary payments for seats and galleries in the said church, and certain gifts thereto, about twenty pounds *per annum*, collected by the churchwardens for the use of the said minister); that about 1695, there being some divisions in the said parish, and the plaintiff, fearing that he should lose his voluntary contributions, applied to the bailiffs and portmen to establish a settled stipend on him pursuant to the said act, which act they put in force, and appointed a stipend yearly to be paid, by equal portions, according to the said act; that the rate amounted to ninety pounds a-year, and was entered down in a book kept for that purpose, together with the several names of the persons rated and the sums payable by them;

The plaintiff, as stipendary minister of *Saint Mary Tower*, in *Ipswich*, claims an annuity of 80*l.* made pursuant to the statute 3. Eliz. c. 14.

CUTLOVE
against
CAPON
AND OTHERS.

which rate book was subscribed by the then bailiffs, and portmen, and inhabitants present, and that the same hath ever since been kept as a standing rate for the succeeding churchwardens to gather and collect by, and as evidence for the better ascertaining of the yearly stipend to the said minister; that it was then ordered and entered down in that book, at the bottom of such rate, that eighty pounds a-year out of that rate, with the said customary payments for seats and gifts, should be allotted and paid to the minister for his yearly maintenance; that such rate and tax being still in force, the churchwardens for the time being, since 1685, having taken upon them the collecting thereof, and also the customary payments for seats and perquisites to the said church, and had paid and satisfied to the plaintiff the yearly stipend of eighty pounds for some years, till the year 1688, after which time, till about 1693, the defendants, being churchwardens, failed in collecting the rate, and refused to take the distresses and to use the other ways and means given them by the said act to enforce the payment of the said rate. The bill therefore prayed, that the defendants might set forth and discover what they had received yearly from the inhabitants for their seats and gifts belonging to the church, and for the rate for six years past, and be compelled to pay all arrears of the eighty pounds *per annum* out of such collections, and if any overplus, to pay the same over to the succeeding churchwardens.

The defendants, churchwardens of Ipswich, say, they paid the overplus of what they collected to the plaintiff.

The defendants, by their answers, confessed the rate, and that they were, in the several years, churchwardens, and had collected the several sums of money by the rate as stated, and for the seats and galleries and gifts belonging to the church, and had paid the same towards the necessary reparations of the church and chancel, and other charges; and that after such their disbursements, they had paid the overplus that remained in their hands to the plaintiff towards his yearly stipend.

The plaintiff replied; the defendants rejoined; and witnesses were examined; and upon reading the said act, and the rate made in 1685 pursuant thereto, and on full debate,

THE COURT declared the rate, made by the then bailiffs, portmen, and inhabitants in 1685, was well made pursuant to the said act of parliament, and that the same is yet in force, and that the several defendants ought to have collected, gathered, and levied the several sums therein mentioned, and out of the monies so collected and levied, together with the perquisites for seats, galleries, and gifts belonging to the said church, in the first place, to have paid and satisfied the plaintiff the yearly stipend of eighty pounds.

The defendants ordered to pay the arrears.

AND THEREUPON IT IS ORDERED AND DECREED, that it be referred to the deputy remembrancer to take the said account accordingly, and that the said bill be dismissed as against the defendant

Defendant *Long*, he having paid the said stipend during the time he was churchwarden, with his proportionable costs.

CUTLOVE
against
CAPON
AND OTHERS.

The cause came on upon the report the twenty-fifth of *November*, when it was referred back for the deputy to review his report; and upon reading the said decree and report, with exceptions, and now hearing counsel, it is ordered by the Court, that the said report be ratified and confirmed, and that the said several defendants do respectively pay to the said plaintiff what is so reported due, with costs to be taxed.

EDW. WARD.
NICH. LECHMERE.
JOHN TURTON.
LITTLETON POWIS

SWAINE *against* PERN.

Cambridgeshire, 29th April 1695.

EASTER TERM
7. WIL. 3

THE plaintiffs, as parishioners and inhabitants of the parish of *Leverington*, in the *Isle of Ely*, for and on behalf as well of themselves as of the rest of the parish, filed their bill against the defendant and others, stating, that within the said parish there are the following customs of tithing, *viz.* for all grounds mown between *Sea Dike* and *Cattle Dike*, twopence an acre; *Flane Field*, one penny halfpenny; and betwixt *High Fenn Dike* and *Cattle Dike*, one penny: a foal, one penny: a milch cow, twopence: a hecforth, that has had but one calf, one penny: calves in kind to be delivered at the will of the owner, after they are three weeks old, and at such time of the year as the owner can best spare them, not hindering his breed, and if the parson delay fetching, he is to pay for keeping: lambs in kind, to be delivered on the first of *May*, and if under seven to pay for every lamb a halfpenny, and if seven, and under ten, to pay a lamb, allowing, for every lamb wanting of ten, an halfpenny, and so likewise of calves; but if any person has under seven calves, and sell any of them to the butcher, he is to pay the tenth part of the money: pigs to be delivered at the will of the owner after they are nine days old, and if the parson delay fetching, he is to pay for keeping: geese in kind, to be delivered before Midsummer; and if any one have under seven pigs or geese, to pay one halfpenny for every one; and if seven and under ten to pay one, and to be allowed what is wanting of ten, one halfpenny a-piece at *Easter*: that every householder, being a married man, is to pay, in lieu of all other things whatsoever paid in other places and not customable here in the name of an offering, fourpence; and for every son and daughter, or other servant not taking wages, one halfpenny; and for every servant taking wages, twopence, if they receive the communion: bees, for every stock smothered

The manner in which tithes are payable in the parish of *Leverington*, in the *Isle of Ely*.

SWAINE
against
PERN.

or driven, whereof profit is taken, twopence : that the parson, or his farmer, or deputy, shall prepare on the *Thursday* before *Easter* a drinking or maundy for the parishioners presently after evening prayer, at the parsonage house, where they are to have bread, cakes, beer, almonds, raisins, figs, stewed prunes, and such like : that the parson shall find a bull and a boar for the service of the township, and, if not, he is to be abridged of calves and pigs, unless he make allowance as it costs the party : wool the tenth stone presently after the sheep is clipt, and if any sell their sheep out of the township after *Candlemas Day* before they are clipt, they are to pay for each sheep one penny : corn if bound, the tenth sheaf ; if loose the tenth shock : hemp and fumble the tenth sheaf when it is pulled, weathered, and thrashed : rape seed the tenth bushel ready dressed, the parson allowing one penny for dressing : wood the tenth tree when felled, except it be of twenty years growth : flax the tenth pottle when watered and bleached : that any stranger, occupying or feeding any ground, is to pay acreage after the custom of the field, as the inhabitants pay for mown ground, the fall at the parson's election : that if any person sow half a pound of onion seed, or above, the parson is to have the tenth bed, and if less, nothing : reed ground, for every year it is looked, cropped, or mown, one penny an acre ; eggs at *Easter*, for every hen or duck, two eggs ; for every cock or drake, three. The bill stated, that the said customs of tithing had been constantly used, as by the several reckoning books of former parsons, and other evidence, appeared ; that about the year 1621 divers differences about the said customs happened, and by the mediation of the judge of the *Isle of Ely* and several justices, they were accommodated and reduced into writing and signed, by which the above customs appeared ; that about 1681 the defendant *Pern* became rector, and received the said rates and payments, until the year 1686, when he endeavoured to overthrow the same, and brought several vexatious suits in the bishop's court, and in this court, but which were accommodated ; that the defendant *Pern* and the parishioners, about the nineteenth of *April* 1688, came to a further agreement of tithing over and besides the former customs, viz. that the inhabitants were to pay for every acre of fed ground in the parish of *Tbeckonholt* (not included) for herbage one penny an acre, or the fall at the parson's election ; grounds sowed with clover or such like for feeding, to be accounted as feeding land, and not otherwise ; and that if the parson neglected the fall in such year he was not to have the penny an acre, neither in the old grounds or in the new ; that the said agreement was reduced into writing ; that shortly after, the defendant intending to avoid as well the customs as the agreement, demanded tithes in kind, and brought his bill in this court for that purpose against *Swaine* and others, which in *Michaelmas Term* 1691 came to a hearing, and the bill was dismissed with costs, and the said customs
and

SWAINE
against
PERN.

and agreement, after several evidences being read to prove the same, were allowed and approved of; that *Pern* petitioned for a re-hearing, declaring that he did not intend to set aside the customs or agreement, but to have some matters explained; which rehearing was granted, and the cause was reheard in *Hilary Term* following, when the court ordered the plaintiff *Swaine* to account and pay for some sheep according to the *modus*; to pay for clover as feeding ground; and to consider the fall mentioned in the additional agreement to be of lambs, wool, and calves, and to account for the same accordingly; that the plaintiff *Swaine* complied with the said decree, and paid him his due for 1691, and hath his receipt; yet he, notwithstanding, again attempted, in the year following, to break through the customs, &c. and to get tithes in kind, and sued the above plaintiffs in the bishop's court, and obtained a judgment for the treble value of tithes in kind (*a*). Therefore for relief the plaintiffs prayed the aid and assistance of this court.

The defendant *Pern*, by his answer, said, that in 1692 he was inducted into the said parish of *Leverington*; that he had in his possession a parchment writing, but that it is lost, or in the plaintiff's hands, but that it is not of sufficient force to establish those rates to be customs so as to debar him from claiming tithes in kind of milk and hay, and that there are several other rates not set forth in the parchment. He denied that the customs had been secretly sued for; but he admitted that the court dismissed his bill in 1691, and that it was reheard, and that he brought his action, &c. as in the bill is stated, and obtained judgment, not by surprise, but on a demurrer; and said that the plaintiffs had brought a writ of error against the judgment.

The defendant *Putter* put in his answer, and said he believed the facts, &c. as the other defendant did.

The plaintiff replied to the defendant *Pern's* answer; and he rejoined; and divers witnesses were examined on both sides.

Upon opening the bill and answers, and upon hearing what could be alledged on both sides, and on long debate thereon, and reading the proofs and exhibits taken in the cause, and also the afore-mentioned cause, and the instrument and parchment writing, dated the twenty-ninth of *April* 1691, entitled a prescription of the accustomed payments of tithes to the parson of the said parish, or to his farmer, or deputy, which have been continued time out of memory of man, and now renewed, consented unto, and agreed upon by the parson and parishioners of the said town, dated as aforesaid,

See another
cause, Hil. 5.
Anne, *Pern* v.
Fountain.

IT IT HEREBY ORDERED, ADJUDGED, AND DECREED, that the said ancient prescription and *modus* mentioned in the parch-

(*a*) I do not find the above orders entered in the decree book.

SWAINE
against
PERN.

ment writing, dated the twenty-ninth of *April* 1621 aforesaid, and the additional agreement, dated the nineteenth of *April* 1688, do and shall stand ratified and confirmed, and be for ever established by the authority and decree of this Court, with these alterations and explanations following: that the *modus* of twopence, three halfpence, and one penny an acre, mentioned in the said parchment writing for all mown grounds, is for and in lieu of all hay growing and cut within the said places; that the twopence to be paid for every milch cow, and one penny for every heifer, is for and in lieu of milk and all profits arising by such cow and heifer, except her calf kept within the said parish; that tithe lambs shall be paid in kind, as well those that fall after as before the first of *May*, respect being always had to the number of lambs, according and pursuant to the said prescription, *modus*, or parchment writing, to be delivered as therein mentioned, save those that fall after *May Day*, to be kept by the owner until a month old, and if longer, to be paid for keeping; that the fourpence to be paid every *Easter* by every householder or married man, is in lieu of all things whatsoever paid in other places, and not customable in *Leverington*, and shall be hereafter paid and received as an offering only; that all other persons, inhabiting within the said parish of the age of sixteen and upwards, shall pay twopence every *Easter* as an offering, whether they receive the sacrament or not; that the maundy or drinking, heretofore kept and provided by the minister of the said parish for the parishioners on the *Thursday* before *Easter*, shall hereafter be had, kept, and provided for them upon the *Thursday* after *Easter*, at which time the parishioners are to reckon and account with the parson, for the time being, for their several *moduses* and dues for the preceding year, and then to have receipts, for what they so pay, if they require the same; that the tithes of cole seed, mustard seed, and turnip seed, upon lands tilled, ploughed, and sowed, or ordered to that purpose, shall be paid in the same manner and proportion as rape seed is by the ancient prescription mode, or parchment writing, said to be payable; that madder, being a new improvement, shall be paid in kind; that for every mill for the grinding of corn within the said parish, such *modus* or payment shall be paid as is and has been heretofore paid for the same; that due notice shall be given to the minister to take his tithes before any corn or grain be carried off the premises; that the weathering and thrashing of hemp and fumble shall be construed, deemed, and taken to be for and in lieu of the seed; that the tithe of wood shall be paid by the tenth tree if felled of twenty years growth or under, which twenty years, if never felled before, is to be reckoned from the first planting, but if felled before, from the last felling thereof; that the woodfall mentioned in the additional agreement, dated 1688, shall be meant and intended the profits of wool, lambs, and calves, which the incumbent may take as above, abating the penny an acre for
acreage

acreage of lands depastured and fed, whether with profitable or unprofitable cattle; but if the one penny an acre exceed the fall, or such profits, the incumbent may take the one penny an acre, and quit the fall or profits, viz. he may take which he will, but not both; that clover shall be paid for by the parishioners to the parson as feeding ground, and not otherwise, or in any other manner; that marriages, churchings, and mortuaries, shall be paid for as hitherto hath been used and accustomed: with which alterations and explanations the said prescription or ancient *modus* specified in the writing, dated in 1621, and the said additional agreement, dated in 1688, are hereby ordered, adjudged, and decreed, to be for ever hereafter observed, kept, and performed by all parties interested and concerned therein, according to the tenor and true meaning thereof.

SWAINE
against
Pern.

AND IT IS ALSO ORDERED, that the defendant *Pern* do and shall acquit and discharge the plaintiffs from the aforesaid mentioned judgments obtained against them by default, in regard it appears, that according to the ancient *modus* and customary tithing, nothing is due from them to the defendant; and for that purpose he shall forthwith execute warrants of attorney to the plaintiff to acknowledge satisfaction upon record of the judgments obtained; and that the said defendants shall also deliver up to the plaintiff *Swaine* the bond given by him to the defendant *Pulter* to be cancelled; and that the sums of forty-four pounds, and forty pounds, brought into court by the plaintiffs, be forthwith paid to them, or to those whom they shall appoint.

NICH. LECHMERE.
JOHN TURTON.
JOHN POWELL.

BOOTHOUSE *against* HAYWARD.

Derbyshire, 20th June 1695.

TRIN. TERM,
7. WIL. 3.

THE plaintiff, as rector of *Carsington*, in the county of *Derby*, claims all the tithes of hay, &c. yearly arising therein.

The rector of
Carsington, in the
county of *Derby*,
demands the tithe of herbage, or agistment for barren cattle.

The defendant admitted the plaintiff's right to all the tithes of hay, or to a rate for the same; but as to the feeding and depasturing of about one hundred and twenty acres of pasture ground, he insisted, that within the said parish there is a custom, that all occupiers and landholders dwelling within the said parish shall pay to the rectors for the tithe of every milch cow and calf, three halfpence; and for every strapper or barren cow, one penny, with other dues yearly at *Easter*; and that every landholder using husbandry and getting corn within the said parish, for which they pay tithes in kind, have been freed and discharged from

The defendant
sets up a *modus*
of 1½d. for every
milch cow, and
1d. for every
barren cow; and
that the payment
of the tithe of
corn in kind ex-
empts the land-
holders from the
tithe of agist-
ment.

Boothouse
against
HAYWARD.

from payment of any tithe herbage or agistment for lands there depastured.

Upon debate of the matter, and it being insisted upon by the defendant's counsel, that by the custom within the parish aforesaid one penny had been paid for every strapper or barren cow, in lieu of tithe thereof.

The *modus* does
not extend to
barren cattle.

THE COURT doth declare, that the said custom doth not extend to barren cattle bought in to be fed within the said parish; and that the pretended custom, in the answer alledged, to be discharged of tithe herbage was void.

The tithes of hay
and the depas-
turing of barren
cattle decreed.

IT IS THEREFORE ORDERED AND DECREED, that the defendant shall satisfy the plaintiff for the value of the tithes of the yearly value of the several lands by the defendant depastured with barren and unprofitable cattle, and also for the value of the tithe of the hay by him mowed and gotten in.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.
JOHN BLENCOWE.

TRIN. TERM,
7. WIL. 3.

ESTOPP and Others *against* PORTMAN;
AND
PORTMAN *against* MORETON and Others.

Worcestershire, 22d June 1695.

The inhabitants
of the parish of
Leigh, in the
county of *Wor-*
cester, file their
bill against the
rector, to esta-
blish certain *mo-*
dujes, and parti-
cularly a *modus* of
2d. a year in lieu
of tithe fruit.

THE original bill stated, that the plaintiffs are severally seised and possessed of messuages, lands, and hereditaments lying in the parish of *Leigh*, in the county of *Worcester*, whereupon are fruit trees of all sorts growing; that in the said parish there is a custom that the parishioners and occupiers of lands, who had any fruit trees upon the lands they enjoyed in the said parish, shall yearly pay twopence, as a *modus*, in lieu and satisfaction of the tithe of all fruit growing upon the lands in their respective possessions, which payment is called *Leighton money*; that the tithes of the village of *Brainsford*, being part of the said parish, are paid to the lord of the manor; that the said *modus* of twopence hath been accepted by the rector in satisfaction for tithe fruit; that tithe fruit hath never been paid in kind in the said parish, or any satisfaction made for the same, other than by the said *modus* called *Leighton money*; and that the defendant denies the existence of any such a *modus*. The bill therefore prayed, that the defendant may answer whether he hath not received the said *modus*, and why he refuses the same; and that the plaintiffs may examine their witnesses *in perpetuam rei memoriam*.

The

The defendant insisted, that he ought to have tithe fruit *in kind*, and denied the existence of the *modus*, as stated in the bill, or of any other *modus* or sum of money in lieu of tithes in kind; that *Leighton money* is only in lieu of the tithe of fuel and gardens, and, as such, hath been received by the former rectors, and by the defendant, and not otherwise; that the planting of a very large number of the apple trees growing within the parish hath been within the memory of man, and therefore there can be no such *modus*; and although no tithe fruit hath been paid in kind to the rectors, he denied, that there is any *modus* in lieu thereof, or that he or his predecessors did ever receive twopence, or any other sum of money, or other thing, in lieu of fruit; and therefore he refused to accept, and hoped he should not be compelled to accept, of the same.

ESTOPP
AND OTHERS
against
PORTMAN;
AND
PORTMAN
against
MORETON
AND OTHERS.

The rector denies the existence of any *modus*, and insists on tithes in kind.

The defendant, by his cross bill, also stated, that he is entitled to the *great tithes* of *Brockman*, a vill in the said parish, and to all manner of tithe of fruit, flax, hemp, hops, wood, bees, cows, calves, lambs, wool, fuel, and garden stuff, which two last tithes are called *Leighton money*, and all *small tithes* within the rectory (except in the township of *Brainsford*); that the defendants *Moreton* and *Nott* refused to pay the tithe of fruit, flax, and hemp in kind, and withhold the same, with other tithes, on a pretence that there is a *modus* for the same.

The rector files a cross bill, and says, he is entitled to all tithes, except in *Brainsford*.

The plaintiffs to the original bill, *Moreton* and *Nott*, by their answer insisted upon the several *moduses*, viz. the said twopence, called *Leighton money*, in lieu of tithe fruit; one penny called the *smoke penny*, in lieu of all tithe wood; one penny called *garden penny*, in lieu of things growing in the garden; one penny for each cow, in lieu of tithe milk; four shillings for a calf; and where there are not seven, or more, one halfpenny for a calf reared; eighteenpence for a calf sold; two shillings for a tithe lamb, and where there are not seven or more, a halfpenny for each lamb; and for a sheep sold unshorn between *Candlemas* and the time of shearing, one penny.

The inhabitants set out the several *moduses*.

The defendant *Nott* said, that twopence is due for the fall of a colt, and insisted upon a *modus* of fourpence for the tithe of a pigeon-house.

The defendants said, that they had paid all their tithes and dues, save the *modus* of twopence in lieu of tithe fruit, which they tendered to the plaintiff, who refused the same, and also except what the defendant *Moreton* by his answer confessed was due from him to the plaintiff, viz. for the tithe of flax, one shilling; for hemp, sixpence; for a calf reared, one halfpenny; and for a sheep sold unshorn between *Candlemas* and the time of sheering, one penny; which he offered, by his answer, to pay.

One of the defendants admits certain tithes due.

The

ESTOPP
AND OTHERS
against
PORTMAN;
AND
PORTMAN
against
MORETON
AND OTHERS.

The Court of opinion, that a *smoke penny* is payable in lieu of wood burnt; and that the defendants had paid their tithes, except those confessed.

The cross bill dismissed, except as to *tithe fruit*.

The tithes confessed ordered to be paid.

An issue directed to try the *modus* as to *tithe fruit*.

The plaintiff non-suited, on account of a defect in the issue.

The plaintiffs and defendants replied and rejoined in both causes, and witnesses were examined; and upon opening the pleadings, and hearing counsel on both sides, and reading the proofs taken on both sides in these causes, and hearing what was alledged by counsel for all parties, it appeared to the Court, that there was within the said parish a *modus* of a *smoke penny* payable in lieu of tithe for all wood burnt, and that there was no wood sold by the defendants: it also appeared, that there were such other *moduses* and customs in the said parish as the defendants have by their answers insisted upon: and it also appeared, that the said *Morton* and *Nott* had duly paid the said *Portman* all their small tithes and dues, except the tithe of fruit, for which they insisted that a *modus* was payable as aforesaid; and that they had tendered the same, which the Court thought proper for a trial at law; and also except the said tithes confessed by the defendant *Moreton* in his answer as aforesaid.

IT WAS THEREUPON ORDERED by the Court, that *the cross bill* of the said *Portman* be, and is hereby dismissed as to all other matters and things therein contained, except as to the tithe of fruit.

And as to what is confessed by the defendant *Moreton's* answer to be due to *Portman*, the defendant *Moreton* is hereby ordered to pay, according to his offer in his answer, the said *Portman* having made no proof of any more tithe due to him from the said *Moreton* than is confessed by his answer as aforesaid.

And as to the *modus* of twopence, called *Leighton money*, insisted on by the plaintiffs in the original cause to be payable in lieu of tithe fruit, it is ordered by the Court, that it be referred to a *trial at law*, the issue to be, "Whether there is, and time out of mind hath been, a custom within the said parish of *Leigh*, that the respective occupiers of lands within the said parish have paid twopence yearly, called *Leighton money*, to the rector of the said parish for the time being, in discharge of all tithe fruit growing upon the lands of such respective occupiers, or not?"

And it is further ordered, that the *Lord Viscount Hereford*, a defendant to the cross bill, be, and is hereby dismissed.

These causes came on upon the equity reserved, when it was insisted upon by the counsel for the plaintiffs *Estopp* and others, that at the trial an exception was taken, that the issue, as it was directed by the order, and drawn up, was against the plaintiffs *Estopp* and others, as it included all the tithes of the village of *Brainsford*, and the titheable places thereof, being within the said parish of *Leigh*, which were payable to the *Lord Viscount Hereford* (or his tenants), who is lord of the manor of *Leigh*, and not to the

the rector, by reason whereof the plaintiffs were forced to become nonsuited : whereupon, and on hearing counsel, and what could be alledged on both sides, the issue was ordered to be amended, and a new trial had upon this issue, “ Whether there
“ is, and time out of mind hath been, a custom within the
“ said parish of *Leigh* (except within the village or hamlet of
“ *Brainsford*, and the titheable places thereof), that the respective
“ occupiers of lands, titheable to the rector within the said
“ parish, have, time out of mind, paid, and used to pay, two-
“ pence yearly, called *Leighton money*, to the rector of the said
“ parish for the time being, in discharge of all tithe fruit growing
“ upon the lands of the said respective occupiers titheable to the
“ said rector, or not ?” the nonsuit upon the former trial not to
be given in evidence ; and the consideration of the defendant
Portman's costs for the said nonsuit to be reserved until the further
hearing upon the equity reserved, the Court declaring that the
plaintiff shall not have costs for the same.

ESTOPP
AND OTHERS
against
PORTMAN ;
AND
PORTMAN
against
MORETON
AND OTHERS.

A new trial
granted on an
amended issue.

A new trial was accordingly had ; and upon hearing the causes
on the eleventh of *July* 1696 upon the equity reserved, it was
insisted by the plaintiff's counsel, that they had obtained a
verdict against the defendant *Portman* upon full evidence ;
whereupon, and upon hearing what was insisted upon by the
defendant's counsel, and upon reading the record and *postea* of
the said trial, whereby it appeared, that the jury had found the
custom as stated in the issue ;

A verdict in fa-
vour of the mo-
dus.

IT IS ORDERED AND DECREED BY THE COURT, that the de-
fendant *Portman* and his successors, rectors of the parish of *Leigh*
for the time being, do receive from the respective occupiers of
lands titheable to the said rector of the same parish, the yearly
sum of twopence, called *Leighton money*, in lieu and satisfaction of
all tithe fruit growing upon the lands of the said respective occu-
piers ; that the said custom or *modus* of twopence yearly, called
Leighton money, payable in lieu of tithe fruit, be established, rati-
fied, and confirmed ; that the *cross bill* do stand absolutely
dismissed as to tithe fruit ; and, by consent of all parties, that
the defendant *Portman* shall pay to the plaintiffs forty pounds
for the costs of these causes.

The ad. a-year
decreed to be
paid in lieu of
the tithe of
fruit ;

and the said mo-
dus confirmed.

The rector to
pay 40l. costs.

EDW. WARD.
N. LECHMERE.
LITTLETON POWIS.

PHILLBRIDGE against ORD.

Northumberland, 20th June 1695.

TRIN. TERM,
7. WIL. 3.

THE vicar of *Chatton*, in the county of *Northumberland*, claimed
tithes in kind.

The landholders
of *Chatton*, in
Northumberland,

pay to the vicar a *modus* of 5s. a-year in lieu of tithe hay, and another *modus* of 5s. a-year in lieu of all
other vicarial tithes.

The

PHILLBRIDGE
against
Ord.

The defendants insisted on two *moduses*.

A trial at law was directed on these two issues :

FIRST, Whether there be a *modus* of five shillings payable yearly in full satisfaction of all tithe hay for the grounds occupied by the defendants within the said parish ?

SECONDLY, Whether there be a *modus* of five shillings payable yearly in full of all small tithes due from the defendants to the plaintiff ?

A verdict was given for the defendants on both the issues ; and upon reading the *postea*, and hearing counsel for the defendants ; and the plaintiff's counsel praying a rehearing upon affidavit ; and on full debate of the matter ;

IT IS ORDERED AND DECREED, on the sixth of *December* 1695, that the defendant *Ord* (the other defendant being dead) shall pay to the plaintiff three pounds, five shillings, in full of the *modus* of five shillings a-year for thirteen years, in lieu of tithe hay of his lands held within the said parish, due at the time when the bill was filed ; and also three pounds, five shillings, being in full of the *modus* of five shillings in lieu of his other and small tithes for the said time ; and that the plaintiff do pay to the defendant moderate costs, to be taxed by the deputy remembrancer.

EDW. WARD.
NICH. LECHMERE.
JOHN POWELL.
LITTLETON POWIS.

TRIN. TERM,
7. WIL. 3.

BEVAN *against* WILLIAMS.

Glamorganshire, 20th June 1695.

The lessees of
the vicarage of
Cadoxton, in *Gla-*
morganshire,
claim the tithes

THE lessees of *H. Bowers*, vicar of *Cadoxton*, in the county of *Glamorgan*, claim tithes in kind.

of calves in kind.

The defendant
says, that he had
only six calves,
and that the
tithe thereof is
a halfpenny for
each calf, which
he had tendered.

The defendant said, that he had accounted with the plaintiffs, as farmers of the said vicarage, and paid them all their demands for all manner of tithes and duties due to the vicar, except for the tithe of six calves which he had in the year 1691, and which, by the custom of the said parish, was threepence, viz. a halfpenny for each calf ; which sum he had tendered to the plaintiffs ; and denied that any more was due ; that he occupied three tenements which were heretofore held by three persons ; and that, by the custom of the parish, the calf is titheable where it falls, and not where it is weaned, and also the lambs ; that tithes of
cheese,

cheefe, and the profits of cows, are due to the parson, and not to the vicar ; and that he had ten milch cows, for which he paid tithes to the impropriators, to whom the same belong.

BEVAN
against
WILLIAMS.

The plaintiffs replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading the depositions of several witnesses, it appeared to the Court, that the defendant had duly paid all his small tithes to the plaintiff, except for the said six calves, and that for the tithes of them were only the said customary payment of a halfpenny for each calf, which the defendant had tendered to the plaintiffs before the filing of their bill ; and this being the only matter the plaintiff's counsel insisted upon, it was thought so minute and frivolous, that the Court declared the bill to be vexatious ; and ordered, that the bill be dismissed with good costs for the unjust vexation.

The *modus* declared good, and the bill vexatious.

The bill dismissed, with good costs.

EDW. WARD.
JOHN TURTON.
JOHN POWELL.

RODD and Others *against* BISHOPP.

Devonshire, 22^d June 1695.

TRIN. TERM,
7. WIL. 3.

THE bill stated, that the plaintiffs have been, and then were seised of and interested in divers lands and tenements within the parish of *Stoake Cannon*, in the county of *Devon* ; that within the parish and vicarage there are, and, from the time whereof the memory of man is not to the contrary, have been, several manners of tithing, *viz.* for the tithes of milk and other dues (except for the calf) of every cow within the said vicarage yearly, fourpence ; for every calf yearly, fourpence ; for every heifer, steer, and every barren bullock, yearly, twopence ; for the tithes of every garden, and the herbs, fruit, and garden stuff therein growing yearly, one penny ; and for the tithes of wood cut and felled within the said parish, by every owner of such wood, one penny yearly ; that the defendant, for twenty years past, hath been vicar there, and during all that time hath accepted the said customs ; that the plaintiff's witnesses being dead, old, and infirm, the defendant demands tithes in kind, and endeavours to destroy the customs. The bill therefore prayed, that the plaintiff might have a discovery of the customs aforesaid, and that the manner of tithing within the said vicarage, might be established by the decree of this court.

Several *moduses* in the parish of *Stoake Cannon*, in the county of *Devon*, established, in lieu of vicarial tithes.

The defendant admitted a *modus* of one penny payable for the tithes of every garden, and the pot-herbs and roots growing therein, and used in the houses only ; and also twopence to be payable yearly for every heifer, vewer, and barren cow, within the said vicarage or curacy endowed ; and all

RODD
AND OTHERS
against
BISHOPP.

other the customs as in the bill stated, to be payable in lieu of the titheable matters in the bill set forth ; and stated that twenty years since he became vicar or curate of the said parish by gift of the dean and chapter of *Exeter*.

IT IS ORDERED, ADJUDGED, AND DECREED by the Court, upon hearing counsel on both sides, and reading depositions for the plaintiffs, that the said *modus* of one penny and twopence, as admitted by the defendant's answer, and the said several other and respective customs and manner of tithing due and payable for the several and respective titheable matters, as in the bill mentioned, are good, and shall be, and are hereby ratified and confirmed.

WARD, *Chief Baron*.
TURTON, *Baron*.
POWELL, *Baron*.

TRIN. TERM,
7. WIL. 3.

ANSELL *against* ADMAN.

Kent, 6th June 1695.

No tithes are
due for corn
ground at an
ancient mill.

THE bill charged, that the defendant, for fourteen years past, had held and occupied two water corn mills within the parish of *Stowling*, in the county of *Kent*, where he yearly ground corn and grain ; for which mills the plaintiff, as rector, claimed tithes to be due to him for and in respect of corn and grain there ground.

The defendant said, that during the said time he had held and used an ancient water mill, wherein he ground wheat and other grain, and also a new mill for the grinding of oats, malt, and barley ; and that the tithes of the said new mill were not worth above five shillings ; and he denied that any tithe is due for the ancient mill.

The only question was, Whether tithes were due for the ancient mill ?

THE COURT, upon debate of the matter, and reading the depositions of several witnesses examined on both sides, was of opinion, that tithes were not due to the plaintiff for the said ancient mill.

IT IS ORDERED AND DECREED, that the defendant shall pay to the plaintiff five shillings for the tithes of the new mill ; and as to the tithes of the said ancient mill, the bill is dismissed.

MITCHELL

MITCHELL *against* BROGDEN.*Yorkshire, 22d June 1695.*TRIN. TERM,
7. WIL. 3.

THE bill stated, that *B. Walmesley* being seised in fee, or of some other good estate of inheritance in fee simple, of and in the rectory impropriate of *Gillkirke*, with the appurtenances, in the county of *York*, by indenture dated the sixth of *October*, in the fourth year of *James the Second*, demised the said rectory, with the appurtenances, to the plaintiff, to hold for nine years, at fifty-five pounds a-year; that immediately after making the said lease, the plaintiff entered, and became possessed of the said rectory and premises, and was thereby entitled to all the tithes yearly arising, &c. within the said rectory and premises; and that the same had been duly paid to the plaintiff, except for the two years last past; that the defendant, for the said years, was an inhabitant within the precincts of the said rectory, and was occupier of arable land, which was sown with wheat, rye, barley, oats, peas, and other grain, the tithes whereof were worth, in each year, ten pounds, and ought to have been set out and paid in kind; but that the defendant refused to set out the same, pretending that the said lands were part of the possessions of *Kirshall Abbey*. The bill further stated, that the defendant was and is only lessee for a year, or at will, of the lands he held, upon the demise or contract of one *Clegg*; that, in the year 1666, the defendant refusing to pay his tithes for the said lands, an action was brought against him on the statute, by *Mr. Marsden*, the then farmer of the said rectory, for subtracting his tithes; that a verdict was obtained against him; and that from that time he had acquiesced until the aforesaid two years.

The impropriator of the rectory of *Gillkirke*, in the county of *York*, claims tithes in kind.

The defendant said, that he and his predecessors had, for thirty years past, been seised in fee of thirty acres of arable, meadow, and pasture ground, in the manor of *Bernoldswicke*, within the said rectory; that the same were, and since the first *Lateran council* had been, exempted from the payment of tithes, the lands having been heretofore part of the inheritance of *Henry De Lacey*, then *Earl of Lincoln*, who, in the year 1147, settled the same on the abbey of *Kirshall* for ever; which abbey, being of the yearly value of three hundred and twenty-nine pounds, twelve shillings, and elevenpence, was not dissolved till the statute of 31. *Hen. 8.*; that about the year 1150, the said monastery, being of the *Cistercian order*, was, by *Pope Adrian the Fourth*, exempted from the payment of tithes, and continued so exempt until it came, so discharged of tithes, to the hands of *King Henry the Eighth*; that the said lands, so exempted from all payment of tithes, came to the defendant by mesne conveyances from THE CROWN; and for that reason he had refused to pay the tithes thereof; that he knew nothing of the lease mentioned in the

The defendant says, that his lands lie in the manor of *Bernoldswicke*, within the said rectory; and that the said manor was exempted from tithes, as having belonged to the abbey of *Kirshall*.

MITCHELL
against
BROGDEN.

bill, or that the plaintiff was entitled to all tithes of the rectory ; that there are in the said rectory several messuages and lands exempted from the payment of tithes ; and that, for the space of two years before the bill was filed, he hath been an inhabitant in *Bernoldswicke*, within the precincts of the said rectory ; and he set forth the quantity and values of his tithes in the said two years ; but refused to pay tithes in kind for any of the lands he was so seised and possessed of within the said rectory, for the reason aforesaid. The answer also stated, that the said lands were not in THE CROWN before the thirty-first year of *Henry the Eighth* ; that they were not any part or parcel of the *duchy of Lancaster* ; that he had not any ancient grants, evidences, or trials at law, whereby it appeared, that his said lands were never in the abbey ; but that, on the contrary, it appeared, by certain grants, when and at what time the lands came to the abbey. He denied that he had rented any other lands, nor did he remember the action in the bill mentioned at the suit of *Marsden* ; but said, that if there was any such verdict, it was got by surprize. He further said, that several actions had been brought against him and others for tithes, and that notice of trial was given, but that they were in general tried by surprize.

But upon the evidence it appeared, that the manor of *Bernoldswicke* was parcel of the *duchy of Lancaster*, and never belonged to the abbey of *Kirball* ;

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined, and records proved on both sides ; and upon reading the several records and evidences on the part of the defendant, and of the plaintiff, it appeared to the Court, that *Henry the Sixth*, in the twenty-third year of his reign, by a deed under the duchy seal, reciting, that the said manor of *Bernoldswicke* was parcel of the *duchy of Lancaster*, granted the same, amongst other things, to the *Archbishop of Canterbury* and *York*, and others, and their heirs, which grant was afterwards, in the twenty-fourth year of the said king, confirmed by act of parliament, and declared to be for the performance of the king's will : it also appeared, that both the said grant and the confirmation were afterwards, in the first year of *Edward the Fourth*, by an act of resumption, avoided and repealed, whereby the said manor of *Bernoldswicke* was vested in *Edward the Fourth*, in right of his *duchy of Lancaster* : it likewise appeared, by the minister's accounts for the said duchy, that pursuant to the act of resumption the sum of sixty pounds, six shillings, and eightpence rent is accounted for as due for the manor of *Bernoldswicke* for one year, beginning at *Michaelmas*, in the first year of *Edward the Fourth*, and ending at *Michaelmas*, in the second year of the said king, upon a lease for twenty-one years, made by *Richard Nevill*, then *Earl of Warwick*, chief steward of the said duchy, to *Sir John Huddleston, Knt.* ; and that in divers other subsequent years of the same king, the like account is made for the said manor of *Bernoldswicke* ; whereby, and by other proofs on the plaintiff's part, it appeared to the Court, that although anciently the said rectory of *Gillkirke* might be parcel of the possessions of the

the said abbey, yet that the said manor of *Bernoldswicke* never belonged to the said abbey, but was parcel of the possessions of the *duchy of Lancaster*; and that long before the dissolution of abbeys in *King Henry the Eighth's* reign, the said manor had been, by several kings before that time, granted to divers persons, by the name and as parcel of the possessions of the *duchy of Lancaster*, rendering the yearly rent, sometimes of sixty pounds, and sometimes of eighty pounds and upwards, with several increases of rents. And upon long debate of the matter, and hearing what could be alledged on both sides,

MITCHELL
against
BROGDEN.

IT IS ORDERED, ADJUDGED, AND DECREED, that the defendant do account for and pay to the plaintiff his arrears of tithes due for the lands and tenements in question, for and during the said two years demanded by the bill, or the value thereof, with costs; and it is referred to the deputy remembrancer to take the said account, and report the same.

and therefore
tithes of the said
lands are de-
creed.

EDW. WARD.
JOHN TURTON.
JOHN POWELL.

WILKINSON *against* NEWSOM and Others.

Yorkshire, 20th February 1695.

HILARY TERM
7. WIL. 3.

THE bill stated, that the plaintiff was impropriator of the tithes of corn, grain, and hay, within the township of *Langthorpe*, being part of the impropriate rectory of *Kirkby super Montem*, in the county of *York*; and that the tithes within the said township had constantly, for many years, been paid to him in kind, and to several others under whom he claimed the said tithes.

The impropria-
tor of *Kirkby
super Montem*, in
the county of
York, claims the
tithes of the
township of
Langthorpe.

The defendants insisted, that they ought not to pay tithes for their lands in *Langthorpe*, for that the abbot or prior of *Newbrough* was seised in fee, in right of the monastery, of and in the lands in the possession of the defendants, as parcel of the possessions of the said monastery, until the dissolution of the said abbey; that the said abbot and all his predecessors, and the convent thereof, were of *the Cistercian order*; and that therefore the said lands were freed and discharged from the payment of all tithes growing thereon, as long as they were in the owner's hands, and not to let to farm; that the lands, and other the possessions of the said abbey (being one of the greater abbeys) came to THE CROWN, by the surrender of the abbot, before the statute 31. *Hen. 8.*; and that, by force of the said statute, the defendants, claiming their lands under the crown, and having the same in their own hands, ought to enjoy the said lands discharged of tithes, in as ample a manner as the late abbot or prior enjoyed the same at the time of the said dissolution, as long as the same are kept in their own hands.

The defendants
say, their lands,
having been par-
cel of the mo-
nastery of *New-
brough*, are tithes
free.

A a 2

Upon

WILKINSON
against
NEWSON
AND OTHERS.

But it appearing
that tithes had
been paid for
the lands in
Langthorpe,

tithes in kind are
decreed.

Upon reading a copy of the surrender of the said abbey or priory of *Newbrough* dated the twenty-second of *January*, in the thirtieth year of *Henry the Eighth*; and also a copy of the minister's accounts of the possessions of the said abbey or priory, in the thirty-first year of the reign of the said king; and also upon reading the depositions of divers witnesses taken on the plaintiff's part, whereby it appeared, that tithes in kind had, for many years, been paid to the plaintiff, and to those under whom he claimed, for the said defendant's lands in *Langthorpe*, as well when in the hands of the owners as when in the hands of the tenants thereof;

THE COURT declared, that tithes in kind were due for the said defendant's lands, and that the same ought to have been paid to the plaintiff for the time demanded by the bill; and decreed the same accordingly.

HILARY TERM
7. WIL. 3.

HAWKINS against CHITTLE.

Berkshire, 20th February 1695.

The impropria-
tor of *Thackam*
and *Henwick*, in
Berkshire, claims
tithes in kind.

THE plaintiff, as farmer and owner of the tithes of corn and hay, glebe lands, profits, and emoluments belonging to the impropriate rectory or parsonage of *Thackam* and *Henwick*, in the county of *Berks*, stated, that for three years past he had been, and then was, farmer and owner of the tithes aforesaid, and entitled to receive the same; that the defendant, for the said years, was occupier of arable and meadow land, and had therefrom corn, grass, and hay, for which he ought to have paid tithes to the plaintiff, or some composition for the same, but that he refused so to do.

The defendant
says, that the
lands out of
which tithes are
claimed are par-
cel of the glebe
lands belonging
to the vicar, and
therefore not
subject to pay
tithes to the im-
propriator.

The defendant said, that neither the proprietor nor farmer of the parsonage is entitled to any tithes of the vicar's glebe lands, nor to the tithes of any kind of blades or seeds sown in orchards, curtilages, or gardens in the said parish; but he believed that the farmers and owners of the said parish have, for many years past, been entitled to, and ought to receive from all occupiers of lands and tenements therein, all tithes of corn and hay, except the vicar's tithes as aforesaid; which glebe lands, whether in the hands of the vicar or his farmers, have been, time out of mind, exempt from payment of any tithes whatsoever to the parson or his farmers, by prescription or ancient composition, the said lands being allotted for the maintenance of the vicar; that during the said years he was occupier of a croft of arable land in *Henwick*, called *High Close*, parcel of the vicar's glebe lands; and therefore he did not set out the tithes thereof.

The only question was, Whether tithes were due to the plaintiff for the said *High Close*, parcel of the glebe belonging to the vicarage of *Thackam*, the same being let out to a tenant, and not in the vicar's own hands?

THE

THE COURT, upon debate, took time to consider thereof, being of opinion, that the vicar was endowed, not only with the said glebe land, but also with the tithes thereof.

HAWKINS
against
CHITTLE.

It appeared by the proofs in the cause, that part of the vicar's glebe was formerly in a tenant's hands, and that no tithes were then paid to the impropiator for the same.

THE COURT thereupon ordered, that the said bill be absolutely dismissed, but without costs, as to the demand for the tithes of the glebe land (a).

The Court of opinion, that the vicar is endowed with the tithes as well as the land.

But the defendant's counsel insisting, that the plaintiff had, by his bill, also demanded tithes out of other the defendant's lands, and put the defendant to charges to prove the payment thereof,

IT IS FURTHER ORDERED, that the defendant, as to the said other matters by the bill demanded against him, shall have his costs.

(a) See *Blinko v. Barksdale*, Cro. Eliz. 578. *Harris v. Cotton*, Hob. 188. *Saunders v. Ryall*, Rayner, 71. and the above case of *Hawkins v. Chittle*, Rayn. 77. in which it is said, "that because it appeared that the glebe had been before leased, and that the lessee had not paid tithes, the Court presumed, that the non-payment was evidence that the land was discharged of tithes by the endowment; and therefore dismissed the bill."

STEPHENS *against* MARTIN and Others.

HILARY TERM
7. WIL. 3.

Cambridgeshire, 20th February 1693.

THE bill stated, that the plaintiff is, and hath been ever since the year 1693, vicar of *Lynton*, in the county of *Cambridge*, and is thereby entitled to the tithes of carrot roots, turnips sowed and howed, parsnips, apples, pears, plumbs, calves, sheep, lambs, wool, milk, and to all other small tithes whatsoever; that the defendants, in the year 1694, were severally inhabitants, owners, and occupiers of several parcels of lands and grounds which were plowed, sowed, and hoed with pease, turnips, carrot roots, and other garden stuff, the tithe whereof did of right belong to the said vicar.

The vicar of *Lynton*, in the county of *Cambridge*, claims tithes of peas, carrots, and turnips.

S. C. Rayn. 81.

The defendants denied that he, as vicar, ought to enjoy the tithes of carrot roots, turnips, or pease, or any other tithes, save what are expressed in the endowment; and said, that the master and scholars of *Pembroke Hall*, in *Cambridge*, were the proprietors of the rectory impropriate of *Lynton*; that in 1473, some controversies arising between the master and scholars of the said college and one *T. Green*, then vicar of the said vicarage, touching the mansion-house and some tithes then supposed to belong to the said vicarage, they, by the assent of the then bishop, for quieting and appeasing those differences, and declaring and settling

The defendants say, the peas, carrots, and turnips, were sowed in the common fields, and were never hoed, and therefore the tithes thereof do not belong to the vicar, but to the impropriator;

STEPHENS
against
MARTIN
AND OTHERS

and insist on a
modus.

thing the rights of the vicar for the future, did mutually execute certain indentures, dated the eighteenth of *June* 1473, as is therein mentioned; that no carrot roots, turnips, or garden pease, till within sixty years last past, were ever sowed or hoed in any of the closes or common field lands within the said parish; that one *Mayo* was the first man that sowed the same; which being found very profitable in husbandry, the example was followed by others in the said parish; that the proprietors, or their farmers, of the said rectory did collect and receive tithes thereof, or some composition for the same; that for several years last past, and in the said year 1694, there have been, in the closes and common fields within the said parish, many acres sowed and hoed with carrots, garden or hasting peas, and turnips; which lands always before that time have, or ought to have paid tithes to the rector or farmers of the said rectory, and make up a considerable part of the titheable lands of the said parish. The defendants further set forth their quantities of tithes, and the several things for which they had paid tithes; and insisted, that they used to pay the farmer of the rectory of *Lynton* after the rate of ten shillings for every acre sowed with peas and turnips in the same year; six shillings an acre for what was sowed with peas only; four shillings for turnips; and four shillings for carrots; which rates they believed were sometimes more than the worth of the tithes; and said, that they have not paid the same as yet, but that they are willing to pay them to whom the Court shall adjudge the same of right to be due and payable.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the composition between the master and scholars and the said *Green* dated the eighteenth of *June* 1673 before mentioned, and also a confirmation thereof by the then *Bishop of Ely* as ordinary; and likewise several proofs taken in the cause, and upon mature and deliberate debate of the whole;

The Court of opinion, that peas managed with the hoe belong to the vicar.

THE COURT is of opinion, and doth declare, that the tithes of garden or hasting peas, whether set or sown, which are managed with the hoe, do belong to the vicar, and not to the impropriator (a); and that the tithes of carrot roots and turnips do also belong to the vicar there, and not to the impropriator or his farmer; wherefore

The tithes of the peas, carrots, and turnips, decreed accordingly.

IT IS ORDERED AND DECREED, that the defendants shall pay to the plaintiff, vicar of *Lynton* aforesaid, the tithes of all such garden or hasting peas that have been by them, or by their order, set or sowed, and managed by the hoe as aforesaid, in the said parish and the titheable places thereof; and that the defendants do

(a) See the case of *Nicholas v. Elliot*, Bunb. 19. and post. Hilary Term, 19. Anne, and Hilary, 4. Geo. 1.; and the case of *Grimley v. Birt*, Bunb. 170. and post. Trinity Term, 11. Geo. 1.

severally

severally account for the tithes of such pease ; and also for the tithes of turnips and carrot roots, and all other titheable matters and things due to the plaintiff from the said defendants for 1694, according to their answer and the proofs taken in the cause ; which said account is hereby directed to be taken by the deputy remembrancer, who is to report the same ; and the said defendants shall pay moderate costs throughout ; the costs to be taxed by the said deputy.

STEPHENS
against
MARTIN
AND OTHERS.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.

BOWYER against GIBBS ; et à Contra.

HILARY TERM
7. WIL. 3.

Surry, 21st February 1695.

THE bill stated, that the plaintiff, for three years last past, had been, and still is, impropriator of the rectory and parsonage of *Camberwell*, in the county of *Surry*, and entitled to the tithes of corn and wood arising therein ; that the defendant, for three years past, held two hundred acres of woodland in the said parish, and had cut and carried away the wood and underwood growing therein, the tithes whereof were worth eighty pounds ; that he ought to have paid the same to the plaintiff, his right and title thereto having been decreed in this court by a decree to which the defendant was a party ; but that he had refused to pay the said tithes.

The impropriator of *Camberwell*, in the county of *Surry*, is entitled to the tithe of titheable wood felled in a wood called *Peckman's Wood*, part of the manor of *Dulwich*, and belonging to *Dulwich College*, and to the tithe of corn, &c. reaped on the lands where such wood formerly grew.

The defendant said, that, about the year 1691, he bought of the *College of Dulwich* a wood called *Peckman's Wood*, within the rectory and parish aforesaid, containing about fifty acres ; that he cut down wood therein growing, at two falls, in the years 1692 and 1693, and made the same into bavons and stack wood, and sold and disposed thereof, without setting out the tithes, or making any satisfaction for the same ; that he could not set forth the quantities, but believed the tithe thereof was worth fourteen shillings an acre ; that *Peckman's Wood* was part of the possessions of the abbey of *Bermondsey*, which was one of the greater abbeys dissolved by the statute 31. *Hen. 8. c. 13.* and that by virtue thereof, or by unity, privilege, or other legal discharge, the same is exempted from the payment of tithes ; that a great part of the said wood consisted of runts, standards, and stadles of twenty, thirty, and forty years growth ; and that the faggots and stack-wood made of them were not titheable.

The defendant *Gibbs*, and the master, warden, fellows, poor brothers, sisters, and scholars of *God's Gift College*, in *Dulwich*, filed their cross bill against the plaintiff *Bowyer*, stating, that there was such a bill exhibited against them by the plaintiff ; that they put in an answer thereto, and insisted upon an exemption and

The college file a cross bill,

BOWYER
against
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discharge from the payment of tithes ; that the said master, &c. insisted that their woods are tithe free ; and to the end that the exemption might be determined by a trial at law, and the college and their tenants quieted therein, they exhibited their bill, alledging, that the said woods were formerly part of the abbey of *Bermondsey*, and in the abbot's hands at the time of the dissolution ; that this abbey was one of the greater abbies, and was vested in the crown by the statute 31. *Hen. 8. c. 13.* ; that the said king, in the thirty-sixth year of his reign, granted the manor of *Dulwich* to *T. Calton* and his heirs ; that his heir in the fourth year of *James the First*, granted the same to *E. Allen* ; that *E. Allen*, in the seventeenth year of the said *King James*, founded the said college ; that the master, &c. of the said college having sold *Peckman's Wood* to the said *Gibbs*, he, in the year 1693, felled and converted the same to his own use, without setting out the tithes thereof, inasmuch as the usage of the payment or non-payment of tithes since the dissolution is that which evidences the right to the tithes in demand. The cross bill then proceeded to alledge, that since the dissolution of the said abbey, while the said wood remained in the crown, and while *T. Calton* and his heir were owners thereof, until about the latter end of the reign of *James the First*, a period of about eighty years, no tithes were paid or claimed for the college woods, and that the enjoyment of the said exemption co-operating with the statute was a sufficient discharge ; that the payment of the tithes, or the compositions for the same, which had been since made, were made and paid in an illegal manner, and in consequence of force and violence used by the said *Bowyer* and his ancestors to gain a possession, or by colour of certain orders of the court of wards, or by particular agreements between the said *Bowyer's* ancestors and the college, in all which orders and agreements the right of exemption was always saved ; that *Edward Allen*, the founder of the college, having grubbed up some of the college woods, *Sir E. Bowyer*, the now impropiator's ancestor, demanded tithes of the corn sown thereon ; that the said matter was referred to the then attorney general ; but that both of them died before any thing was done upon the said reference ; that after the death of *Sir E. Bowyer*, informations were exhibited in this Court to compel the tenants of the manor of *Dulwich* to pay tithes to the committee of the ward, young *Sir Edmund Bowyer*, and orders and injunctions were made against *M. Allen*, then master of the college, for payment of tithe wood, but in such orders the right of the college was saved as to the tithe wood ; and that if, upon a trial, it should appear to be in the college, the tenants were to have a recompence ; that in order to have such their rights tried, the master, &c. of the said college, in the year 1637, exhibited their bill in chancery against *Sir E. Bowyer*, who answered, and witnesses were examined, and the cause heard, and an issue at law directed to try the exemption, but that no such issue was ever tried ;

tried ; that since that period they had made application to the now defendant *Bowyer* for a trial, the statutes of their college requiring it ; and that as they have no other way of being defended in their right but by the protection of this court, they hope the Court will direct a trial at law. The said *Gibbs* and the college therefore, by their cross bill, prayed, that the defendant *Bowyer* might answer the premises, and discover what wood was carried away for tithe, and what papers and writings he had in his custody concerning the tithes in question, and particularly an affidavit of *F. Calton*, sworn in chancery, the twenty-third of *November* 1632 ; and that a trial at law be directed.

Bowyer
against
Gibbs ;
et c. *Contra.*

Bowyer answered and said, that he is impropriator of the rectory of *Camberwell*, and that he had exhibited his bill in this court as above alledged, which is yet depending ; but denied that the college had till of late claimed the said woods to be tithe free, and averred that they had paid tithes or made composition for the same, as he had proved in a former suit in this court against the said *Gibbs* and others, wherein he had a decree for the payment of the tithes now demanded ; that as long as he could remember the college had paid a composition for the said tithes to his father, and since to him ; that *Dr. John Allen* becoming master of the said college, he, about the year 1678, caused some of the tenants to dispute the tithes ; and thereupon he had brought an action upon the statute against one *Starkey*, a tenant of the college, and upon full evidence obtained a verdict for the tithes of the wood land ; that thereupon the said *John Allen* obtained a lease of the tithes from him the said *Bowyer* at an annual rent ; that afterwards the present master of the said college again litigated the right, but that he the said *Bowyer* had obtained a decree, which he hoped would have satisfied him, especially as the said decree had been affirmed upon a bill of review, and the money paid. *Bowyer* confessed, that the woods were part of the possessions of the abbey of *Bermondsey* ; but averred, that they were not in the abbot's hands at the dissolution ; that he knows not by what statute they were dissolved, nor how they came to the *Caltons* or to the college, but believed that *Edward Allen* founded the college ; that the college leased the woods to the plaintiff *Gibbs* ; and that the same were not tithe free in the hands of the abbot, or of the crown, or of the *Caltons*, but that tithes were constantly paid, or some composition made for the same, in the same manner as for the rest of the manor of *Dulwich*, for which tithes have been constantly paid ; that *Gibbs* had agreed with the said *Bowyer's* agent about setting out the tithes of wood taken away, and that an allowance had been made for it in the decree ; that he believed the tithes taken by his ancestors was without violence, and that he knew not what orders were obtained in the court of wards, nor what transactions were between *Sir E. Bowyer* and the founder of the college, nor what reference

The answer.

was

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was ever made respecting the tithes ; neither hath he any agreement or copy thereof, nor other papers, or affidavit that evidence the exemption ; but that, on the contrary, he hath many papers that manifest the payment of the tithes ; that he believed there was a suit in chancery, and that witnesses were examined therein, which proved the payment of tithes for forty years before 1637, which he made use of at the last hearing in this court ; that the plaintiff did treat with him about a composition for the tithes of the college woods ; and that he made them reasonable offers ; which they not accepting of, he unwillingly sued them and recovered ; but that notwithstanding such recovery they will not pay their tithes.

The plaintiffs in both causes replied ; the defendants rejoined ; and divers witnesses were examined ; and on the fourth day of *January* last an order was obtained, that both causes should come on together, and for reading several depositions, orders, and proceedings in the different causes, and the depositions taken therein, and for the defendants to appear *gratis*.

Upon hearing counsel for all parties, and the defendants, the college, insisting, that the said *Peckman's Wood*, out of which the said plaintiff demands tithe wood, and all other the woods of the said college, were part of the demesnes of the abbey of *Bermondsey*, and in the abbot's hands at the dissolution, and were therefore exempt from payment of tithes, the said abbey being one of the greater abbeys ; and upon reading the defendant's proofs for making out the said exemption, that is to say, an indenture, dated the sixth of *May*, in the thirty-eighth year of *Henry the Eighth*, made by the abbot of *Bermondsey* to *J. Scott*, wherein there was an exception of "*Dulwich common woods* ;" and a copy of a particular made in the thirty-sixth year of *Henry the Eighth*, remaining in the augmentation office, upon the purchase made by *Calton* of the crown of the manor of *Dulwich* ; and the account of *T. R. Woodward* of the said *King Henry the Eighth*, in the thirty-sixth year of his reign ; and a bill and answer in the court of wards, in the sixth year of *Charles the First*, at the suit of *Sir W. Pye* against *Fox* and others ; and an order in the said cause made the sixteenth of *May*, in the seventeenth year of *Charles the First* ; and a writing, dated the twenty-ninth of *April* 1626, signed by *F. Bowyer* and *E. Allen*, the master of the said college, whereby certain matters then in difference between them, touching the tithes of three parcels of grubbed land called *Coker's*, were referred ; and the depositions of divers witnesses taken in chancery in 1638 in a cause, *The College of Dulwich v. Bowyer* ; and an order made in chancery in the same cause, the twenty-sixth of *January* 1638, directing a trial at law touching the tithes of woodlands and other lands then in question ; also on reading articles of agreement, dated the ninth of *May* 1642, made between

between *Sir E. Bowyer* and the college, whereby the college agreed to pay five pounds a-year for the tithes of the woods and other lands therein mentioned; and also the depositions of divers witnesses examined in the cause formerly depending in this court, of *Bowyer v. Barrett*, touching tithe wood of woodlands belonging to the said college; and also the decree made in the above cause, dated the fifth of *December*, in the fourth year of this king (a); also the depositions examined in this cause; and also the depositions taken in the court of chancery mentioned aforesaid; and after long debate of the matter, and hearing what was alledged by counsel on either side, the counsel for the defendant *Gibbs* and the college prayed a *trial at law* upon the said exemption.

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against
GIBBS;
et d. Contra.

But for that it appeared to the Court, by the said order of the court of wards of the sixteenth of *May*, in the seventh year of *Charles the First*, that the tithe of corn was paid for the *demesne lands* of the said abbey; and the said college, having accepted of a lease made in 1642, at the rent of five pounds a-year, then yielded up the right of the said tithe wood, and the payment having gone accordingly till 1680, and there having been a *trial at law* since, in an action brought by the now plaintiff against *J. Starkey*, for the tithes of corn growing on the college land, which was formerly woodland, and grubbed up, wherein, upon a full evidence, a verdict passed for the plaintiff; and the then master, *Dr. J. Allen*, having thereupon taken a lease of the tithes of the college woods, at a rent, of the plaintiff, and paid the rent accordingly. The matter not appearing doubtful to the Court, so as to direct any *trial at law* herein,

IT IS THEREUPON FINALLY ORDERED, ADJUDGED, AND DECREED, that the said defendant *Gibbs* shall account with and satisfy the plaintiff *Bowyer* for the tithes of the wood by him felled and cut in the said wood called *Peckman's Wood*, in the several years in the bill mentioned, together with moderate costs to be taxed for the said plaintiff.

AND IT IS FURTHER ORDERED, by consent of both parties, that the tithes of the said wood felled by the said defendant in

(a) This cause came on 4th February 1691, in Hilary Term, 3. Will. & Mary. The object of the bill was to discover what wood the defendant *Barrett* had felled from the wood grounds and coppices in the parish of *Camberwell*, and what quantities of faggots, stackwood, and runts, he had made of the same, and to have the tithes thereof. The defendant confessed, that he had felled the wood called *the Fifty Acres*, which he had bought of the college; and insisted, that it was part of the abbey of *Bermondsey*,

and therefore tithe free. The Court, however, on reading, among other evidences, the proceedings in a suit in chancery between the college and the present plaintiff's father, concerning the said wood; and also a verdict at law in a cause of *Bowyer v. Starkey*; and the lease made by the college in June 1681; were fully satisfied, that the tithes of the wood in question were due to the plaintiff, and decreed the same to be paid accordingly.

Peckman's

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Peckman's Wood, and the tithe of all other the woods felled by the defendant in the college woods for all the time since the last decree, shall be computed after the rate of six pounds *per annum*; which, for all the said time from the making the said last decree to this time, amount to thirty pounds; the same is, by the like consent, ordered and decreed to be by the said defendant *Gibbs* forthwith paid to the plaintiff *Bowyer*.

And it is further ordered by the Court, that *the cross bill* of the defendant *Gibbs* and the college be dismissed, but without costs.

And it being proposed by the Court, for the final determination of all differences between the plaintiff *Bowyer* and the said college, that the plaintiff, who declared himself only tenant for life, should make the college a lease for years, determinable upon his death, of the tithes of all the college woods comprised in the lease to *Dr. J. Allen*, at the rent of six pounds *per annum*, the same was agreed to by the plaintiff, and is, by consent, ordered accordingly.

EDW. WARD.
NICH. LECHMERE.
JOHN TURTON.
LITTLETON POWIS.

EASTER TERM,
8. WIL. 3.

SANDYS *against* EASTMOND and Others.

Somersetshire, 26th May 1696.

The rector of *Yecvilton*, in *Somersetshire*, claims tithes for the agistment of barren cattle.

S. C. Rayn. 78.

THE bill stated, that for fifteen years past the plaintiff had been rector of the rectory and parish of *Yecvilton*, in the county of *Somerset*, and intitled to all the great and small tithes arising therein; that the defendants, from the year 1677 to this time, yearly held meadow and pasture ground, whereon they yearly fed dry and unprofitable cattle, and fed, fatted, depastured, and agisted oxen and other cattle, the tithe herbage and agistment whereof they ought to have paid to the plaintiff; which they refused to do.

The defendants confess possession of the land;

The defendants confessed, that *H. Eastmond*, in his life-time, held and enjoyed several acres of arable, meadow, and pasture ground within the said parish.

and say, that they used the cattle for ploughing and manuring the land, and then fed and sold them.

The defendant *Nayle* said, that neither the plaintiff or his predecessors having, until lately, demanded tithe herbage for the fattening of oxen, he did refuse to pay the same, for that he usually ploughed, eared, and manured his arable land yearly with his said oxen, or with some of them; and that after he had so manured his land, he turned off his oxen to be grazed and fatted, and bought in others.

The

The defendant *Eastmond* admitted assets sufficient, and that the said *H. Eastmond* held several acres of meadow and pasture ground, on which he in his life-time, and the said defendant since his death, fed and depastured several cows, sheep, and cattle for the pail and plough, and oxen, and dry and unprofitable cattle; and that he used the said oxen in his plough, and manured his lands therewith, as the other defendant had done. And they set forth the quantity of their cattle.

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against
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AND OTHERS.

The plaintiff replied; the defendants rejoined; and several witnesses were examined; and upon debate of the matter,

IT IS ORDERED, that the defendant *Nayle* shall pay to the plaintiff the value of his tithe herbage for the feeding and depasturing his oxen and unprofitable cattle not by him used for the plough within the said parish for and during the time they were so fed and depastured in the said parish in the years in the bill charged; and also the value of the tithe herbage for the feeding and depasturing the said defendant's oxen and unprofitable cattle which were by him used for the plough, and were afterwards by him turned off, and not used for the plough, and were fatted and sold, for all the time they were so fed and depastured within the said parish in the pastures there, but not in the *after-math* or *grass*, after they were turned off, and not used for the plough within the said parish in every of the said years in the bill mentioned; and that the defendant *Eastmond* shall account, in like manner, for himself, and as executor to *H. Eastmond*; and it is referred to the deputy remembrancer to take the said account, and to report the same (a).

The Court decrees tithe to be paid during the time the cattle were fed for sale;

but not while they were depastured in the aftergrass.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.

(a) This decree was affirmed upon an appeal to the House of Lords, Shower P. C. 192. in the report of which it is said, that this was a settled and allowed difference in the exchequer, that while the oxen are working no tithe shall be paid for their feeding, because there are tithes of other things arising by the

labour of such cattle; but when they do no work, and are turned off to be fatted, and are grazed, there tithes shall be paid for the herbage which they eat, they being no way beneficial to the parson in any other tithes; and many cases in the exchequer cited to warrant this distinction.

HARDING against GOLDING.

Wiltshire, 8th May 1696.

EASTER TERM
8. WIL. 3.

THE bill stated, that *William Hicks*, rector and incumbent of *Broughton Gifford*, in the county of *Wilts*, did lease and demise to the plaintiff the great and small tithes arising therein; and that he had been legal farmer of the said tithes, and so entitled to the same, from the twenty-fifth of *March* 1693 to the time of filing the bill.

In the parish of *Broughton Gifford*, in the county of *Wilts*, there is a custom to pay 8d. in lieu of a tithe calf.

The

HARDING
against
GOLDING.

Tithes shall be paid of apples fallen as well as of apples gathered.

The defendant put in his answer; the plaintiffs replied; the defendant rejoined; and witnesses were examined; and upon hearing counsel, and reading the proofs,

IT IS ORDERED, that the defendant shall account with and pay to the plaintiff the value of his tithe fruit for the two years demanded by the bill, and the tithe of all fallen apples as well as other apples, and the value of the tithe hay of the half acre of land, and of the cock of tithe hay taken away by the defendant, and eightpence a calf, according to the custom of the said parish, for the tithe of every calf which he had fallen within the said parish during the said time, and the value of the tithe lambs which had fallen within the said parish, and the tithe wool of the sheep which he shored therein, and had not paid to the plaintiffs, and for the value of the tithes of the other things titheable demanded by the said bill; and it is referred to the deputy remembrancer to take the said account, and report the same.

TRIN. TERM,
8. WIL. 3.

GODDARD against MANN.

Berkshire, 2d July 1696.

The vicar of *Beenham*, in *Berkshire*, claims the tithes of wood felled in *Six Acre Coppice*, *Cowbill Coppice*, *Shrubwood Coppice*, and the *Hedgerows* belonging to *Beenham Farm*.

The defendant insists that the said farm was parcel of the abbey of *Reading*, and tithe free.

THE plaintiff, as vicar of *Beenham*, in the county of *Berks*, exhibited his bill to have a discovery of the quantities of underwood and other wood growing in coppices and hedgerows, in the said parish, which the defendant had cut and carried away.

Coppice, *Shrubwood Coppice*, and the *Hedgerows* belonging to *Beenham Farm*.

The defendant by his answer confessed, that he occupied a farm called *Beenham Farm*, and three several coppices thereunto belonging, containing about eighteen acres, and set forth the several quantities of wood by him felled and cut in and upon the said three coppices, and the shawes and hedgerows of the said farm, but insisted that the said farm and coppices were heretofore parcel of the possessions of the abbey of *Reading*, in the said county of *Berks*, which was one of the greater abbeys, and came to the crown by the statute 31. *Hen. 8. c. 13.* and that the abbot, at the time of the dissolution of the said abbey, held the premises discharged from the payment of tithe wood.

It appears by the evidence that the said farm and woods were parcel of *Reading Abbey*, but that the vicarial tithes thereof, excepting of hay, have constantly been paid.

Upon debate of the matter, and on reading the depositions, and the record of the letters patent, granted to *H. Norris* and his wife, dated the twenty-sixth of *August*, in the thirty-sixth year of *Henry the Eighth*, it appeared that the premises were part of the possessions of the abbey of *Reading*, which was one of the greater abbeys; and on reading the plaintiff's proofs, by which it also appeared, that the tithes had been paid to the plaintiff's predecessors, for the coppice woods in question, and that the tithes of beans, pease, and vetches, and other small tithes arising upon the said farm called *Beenham Farm*, had been constantly paid to

to the plaintiff, and to the former vicars, but that no tithe hay was paid for the said farm to the plaintiff, although he had the tithe hay in the rest of the parish.

GODDARD
against
MANN.

THE COURT directed a trial at law on the following issue, "Whether the three coppices called *Six Acres Coppice*, *Cow/bill Coppice*, and *Shrubwood Coppice*, and the hedgerows of the said farm be discharged from the payment of tithe wood, or not?" and a verdict on the said trial being found for the plaintiff,

An issue directed to try the pretended exemption, and a verdict for the vicar.

THE COURT ordered and decreed, that the defendant shall pay to the plaintiff the value of the tithes of the said woods.

The tithes of the said coppices decreed.

PRIAULE against STONE and PATCHING.

Sussex, 18th June 1696.

TRIN. TERM,
8. WIL. 3.

THE rector of *Rusper*, in the county of *Sussex*, claimed tithes from the defendant *Stone*, from *Michaelmas* 1685 to *Michaelmas* 1694, of a farm called *the Nunnery*, in the said parish of *Rusper*, and from the defendant *Patching*, for four years, of a farm called *Langhurst*.

The rector of *Rusper*, in *Sussex*, claims tithes in kind of lands called *Langhurst* and *the Nunnery*.

The defendants by their answers said, that the plaintiff was not legally rector of *Rusper*, or lawfully instituted or inducted therein, for that he took institution and induction when he was under the age of twenty-three years; and, after confessing possession of the said farm, insisted on a *modus* of forty shillings a-year to be paid by the owners and occupiers of the said lands, in lieu of all tithes, to the rector of *Rusper* aforesaid. They confessed that they gave the plaintiff's predecessor five pounds a-year as a *free gift* for his extraordinary pains in the ministry, and continued the same for five years.

The defendants say, the plaintiff is not lawful rector, because he was instituted and inducted while under 23 years of age, and insist on a *modus* of 40s. a-year.

Upon reading a verdict in an action of debt brought by the plaintiff against the defendant *Stone*, upon the statute of *Edw.* 6. for not setting out tithes in kind, a trial at law was directed upon two issues, to try the *modus* as above stated, with respect to the two farms; on which trial the jury found verdicts for the defendants, but they being to the dissatisfaction of the judge who tried the causes, a new trial was ordered to be had upon payment of the costs of the former trials, and that there be two records; and on the said trials the jury found and gave their verdicts for the said defendants, in affirmance of the said *modus*.

An issue directed, and on two trials verdicts for the defendants.

IT WAS ACCORDINGLY ORDERED AND DECREED on the sixth of *May* 1697, that the defendant *Stone* shall forthwith

The defendant *Stone* ordered to pay the arrears plaintiff's title.

of the *modus*, and costs for controverting the satisfy

DECREES IN TITHE CAUSES

**PRIORALE
against
STONE AND
PATCHING.**

satisfy and pay to the plaintiff eight pounds of the arrears of the said *modus* of forty shillings a-year, for the said farm called *the Nunnery*, for four years, ending at *Michaelmas* 1694, the said defendant *Stone* to have his costs taxed, but no costs to be allowed him for the proceedings which litigated the plaintiff's title, as to his being under the age of twenty-three years at the time of his institution and induction into the said rectory of *Rusper*.

The defendant *Patching* ordered to pay the arrears of the *modus*, without costs on either side.

And on the twenty-fifth of *June* 1697, IT WAS ORDERED AND DECREED, that the defendant *Patching* shall forthwith satisfy and pay to the plaintiff eight pounds for the arrears of the said *modus* of forty shillings a-year, for the said farm called *Langhurst*, for four years, ending at *Michaelmas* 1694, without costs on either side; the said defendant to pay for entering the decree.

EDW. WARD.
LITTLETON POWIS.
JOHN BLENCOWE.

**TRIN. TERM,
8. WIL. 3.**

SNOW against HEWITT and Others ; et è Contra.

Somersetshire, 11th July 1696.

The rector of *Staple*, in *Somersetshire*, claims tithes in kind.

THE plaintiff, as rector of the parish church of *Staple Fitz Payne cum Bicknell*, in the county of *Somerset*, demanded tithes in kind.

The defendants insist on a variety of *moduses*.

The defendants insisted on the following *ancient customs*, FIRST, That of all corn and grain there shall be paid the tenth sheaf, stooke, or stich according to the condition such corn and grain was in when the owners carried away the nine parts (except of peas and vetches) and of peas and vetches the tenth rood, wodd, or mock, in lieu of the tithes thereof, and of the odd stiches, sheafs, wodds, or mocks under ten, no tithe shall be paid. SECONDLY, the rate of twopence a cow for the tithe of the *milk* thereof, and three halfpence for the milk of a heifer yearly kept in the said parish and the titheable places thereof, and sixpence in lieu of the tithe of every calf fallen there, so as the parson there, for the time being, keep a bull within the said parish for the bulling of their cows, or allow the owner of the said bull sixpence, or so much as the bulling of the cow shall cost. THIRDLY, one penny for every colt fallen, in lieu of tithes thereof. FOURTHLY, one penny for the tithes of a garden within the said parish. FIFTHLY, an halfpenny for every lamb found within the said parish, or titheable places thereof, on *Saint Mark's Day*, if the number belonging to one person be under seven, and if seven and under ten, then the seventh lamb in kind for the tithe thereof, the parson paying the owners of such lambs one halfpenny for every

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against
HEWITT
AND OTHERS;
et c. contra.

every one that hath been wanting of ten, and if ten then the tenth in kind, and after that rate for a greater number of lambs than ten; such tithe lambs to be fetched away on *Saint Mark's Day*. SIXTHLY, The tithe of wool shorn, in kind, except of lamb tow, of which no tithe is due; but if any sheep hath been kept, and no tithe of the wool or lamb thereof hath been paid to the parson, then he shall have fourpence for every score of sheep depastured, in lieu of the tithes, and after that rate for a greater or lesser number than twenty. SEVENTHLY, that if any person in the said parish, or in the titheable places thereof, have any lands or tenements of his own, and rents other lands there of a less yearly value than his own, he shall pay tithes for such rented lands as if they had been his own, and no otherwise; but if he rent lands of a greater yearly value than his own, then the tenant shall pay either tithes and customary payments as if his own, or agistment, at the rate of twentypence in the pound, for every pound that the rent thereof amounts to, at the parson's election, but with this, that if the parson hath chosen to receive such agistments for such rented lands, then such agistments shall be in full of all tithes and customary payments due, as well out of such tenant's own lands, as of his rented lands, and nothing else shall be paid for the tithes of the same; and if such tenant, at a rack and improved rent, hath no lands there of his own, he shall pay for agistments after the rate of twentypence in the pound of his rent for the same, except that he shall pay the tithes of the house belonging thereto as if the lands had been his own, but at the parson's election; yet if the tenant hath rented the lands for more than one year, the parson is to take for the remainder of the years as he chose for the first. EIGHTHLY, the tithe of pigs shall be taken according to the manner of tithing of lambs, provided the parson hath kept a boar in the parish for the boaring of the sows, or in default thereof hath allowed what such boaring cost the owner. NINTHLY, apples and pears are titheable in kind, the owner giving notice at the parsonage house when he intends to gather them. TENTHLY, That for hay made of common gra's or clover, and for wood cut either in coppices or otherwise, for fuel, there hath been, time out of mind, stint sums of money for every ancient tenement and other lands there, to wit, one for hay, and one for wood, clover grown to feed being accounted within the stint or *modus* for hay, and nothing else ever paid. ELEVENTHLY, that where a tenement hath been divided into two or more parts, and one part, with the house, hath been enjoyed by one person, and the other by another person, the tenant, enjoying that part of which the house is parcel, hath usually paid those *moduses* and stints for hay and wood. TWELFTHLY, That every inhabitant within the said parish fit to receive the sacrament, hath at *Easter* paid to the parson twopence for offerings. THIRTEENTHLY, that of eggs no tithes are due. And the

Snow
by inf
HEWITT
AND OTHERS;
et Contra.

The defendant
Hare insists on a
modus for hay as
to Street's tenement.

defendants said, that the plaintiff or his farmers, for the said first eight years, have received such compositions as aforesaid.

The defendant *Hare* said, that for the year 1691 he rented a tenement of *Mrs. Hampton*, and some grounds, parcel of *Street's Tenement*; and that there is a *modus* in the said parish, that the occupiers of that tenement have, time out of mind, paid one shilling *per annum* in lieu of tithe hay cut, and twopence *per annum* for wood felled thereon, and no more; that the occupiers of *Street's Tenement* have paid ten shillings for hay cut, which ought to be paid by the occupiers of the dwelling-house on that tenement, and twopence, and no more, yearly for tithe wood cut for fire.

The defendant
Hewitt pleads a
modus for his
own tenement.

The defendant *Hewitt* said, that in the said year he had of his own a messuage, and some meadow and pasture land and coppice, and rented some more; that he cut grass and clover grass, and made faggots of wood felled. As to the hay and wood, he pleads the custom aforesaid, viz. for his own tenement, eightpence for hay, and twopence for wood for fuel; and for that which he rented, two shillings and twopence for hay, and threepence for tithe wood cut for fuel; which was paid by the tenant of the farmhouse and the rest of the said tenement.

The defendant
Pool insists on a
modus for *Terry's*,
Main's, and
Booby's.

The defendant *Pool* said, that in the said year she enjoyed three tenements of her own; one called *Terry's*, another called *Main's*, and another called *Booby's*; to which belonged meadow, pasture, and coppice ground; that she mowed grass and clover grass, and cut faggots, but insisted on the *moduses* for hay and wood, viz. for *Terry's* and *Main's* tenements, sixpence each for tithe hay, and twopence for wood cut for fuel, and no more; and for *Booby's*, for hay one shilling and sixpence, and for wood threepence, and no more, in lieu of all tithes for hay and wood.

The defendant
O. Hare pleads a
modus.

The defendant *O. Hare* said, that he had a house and ground of his own; and that threepence was due to the plaintiff for the *modus* for hay, and twopence for wood.

All the defend-
ants state the
quantities and
values.

And all the defendants set forth the quantities and values of the titheable matters which they had respectively in the said year, and said, that they had paid part of their tithes, and by their answers tendered to pay the residue, according to the *moduses* and customary payments aforesaid. They denied, that they enjoyed any lands or tenements in *Bicknell*, or that they had any titheable matters therein.

The defendant
Portman files a
cross bill, and
insists on certain
moduses, except
in *Staple Park*.

The cross bill set forth, that the plaintiff *Portman* is, and for many years last past hath been, seised of a certain park, farm, and lands, called *Staple Park*; and that the rest of the plaintiffs are seised and possessed of and in certain messuages, tenements, and lands in *Staple Fitzpaine*, and the titheable places thereof; that,
for

for time whereof the memory of man is not to the contrary, there hath been many ancient, laudable, and reasonable customs concerning tithes, payable in the said parish (except in *Staple Park* and the lands therewith used), and others of distinct *modus*es for particular lands and tenements, for grounds mowed and woods cut on their tenements, which hath been constantly received by the rectors of *Stapleparish cum Bicknell*, viz. in lieu of all tithes within *Staple Park*, and the farm and lands therewith used, yearly, three pounds, nine shillings, and sixpence; and the same customs and manner of tithing and setting forth of corn, grain, and payment of agistments and of tithes, for and in lieu of milk, colts, garden, lambs, wool, and pigs (except *Staple Park* and the lands therewith used), as the same are set forth in the defendant's answer to the original bill; that by the custom of the said parish, the plaintiffs (except the plaintiff *Portman*) have paid, and ought to pay, the several sums of money, for and in lieu of tithe hay, and tithe wood cut on their respective tenements in the said parish and the titheable places thereof; and he set forth the several payments. The bill therefore prayed, that the said defendant might discover the customs, usages, customary payments, *modus*es, stints, and manner of tithing within the said parish and the titheable places thereof; and that the same may be established by the decree of this court.

Snow
against
Hewitt
and Others
as Defendants

The defendant denied the *modus* in lieu of tithes arising within the park farm lands called *Staple Park*, and of tithing corn and lambs, and paying of agistments, to be as in the bill is charged. He also denied the custom touching the tithes of calves; but said, that he hath heard there is one penny for the tithe of a garden; and confessed the custom for the milk of cows and heifers, the paying tithe wool, and the depasturing of sheep, to be as in the bill is stated; but knew not of any such customs for tithing of pigs, nor any such customs or stints in lieu of tithe hay and wood, as are therein set forth.

The rector denies the *modus*es and the exception.

Admits the *modus*es as to milk, cows, and heifers.

The plaintiffs replied; the defendants rejoined in both causes; and witnesses were examined; and upon reading the depositions of several witnesses taken on both sides, and upon long debate of the matter,

THE COURT declared that the pretended *modus*es (except as hereafter) set up by the parishioners were void *modus*es.

*Modus*es void.

IT IS ORDERED AND DECREED, that the defendants *Hewitt*, *Peole*, and *Hare*, shall respectively account with and pay to the plaintiff *Snow* the value of their, and each and every of their tithes in kind, due from them to him for the year 1692, except for the tithes of milk, cows, heifers, colts, and gardens; the several customs of twopence a cow, and three halfpence for a heifer in lieu of tithe milk, and one penny for a colt, and a garden penny, being hereby established; and that

Certain of the *modus*es declared good.

SNOW
against
HEWITT
AND OTHERS;
et à Contra.

the said defendants shall account with and pay to the said plaintiff for the tithes aforesaid, to wit, each one for his and her own tithes due and unpaid in the said year, according to the said customs established as aforesaid; and for the tithe of hay and wood for his time, by consent, according to the stints and *modus* set forth in the answer, without prejudice to the said plaintiff, or the right and title which he may have to the tithe in kind; and it is hereby referred to the deputy remembrancer to take and report the account.

The question concerning tithe hay and wood referred to Colonel Palmer.

AND IT IS FURTHER ORDERED AND ADJUDGED by consent of all parties, that as to the difference concerning tithe hay and wood, it shall be referred to *Colonel Palmer* to settle the same; and in case he cannot settle the same, then to make his report how he finds the same.

Costs.

AND IT IS FURTHER ORDERED, that the defendant *O. Hare* shall be dismissed with moderate costs.

AND IT IS FURTHER ORDERED, that the said defendants *Hewitt, Poole, and W. Hare*, shall pay to the plaintiff *Snow* his costs of the original cause, to be taxed by the deputy remembrancer; that the consideration of costs in the cross cause shall be reserved till after coming in of the award or report; and that the said cross bill be, and hereby is dismissed as to all things, except the customs decreed aforesaid, and the tithes of hay and wood referred as aforesaid.

Palmer declines the reference.

Pursuant to the above order, the said *Colonel Palmer* made his certificate, dated the tenth of *October* last, whereby he certified he had been attended by all the parties; but by reason of the difficulties arising therein, he did not think himself a competent judge; therefore submitted the same to the judgment of the court. And upon hearing of counsel on both sides, and reading the said certificate, and the depositions of divers witnesses on both sides, forasmuch as it appeared to the Court, that the plaintiffs in the cross bill had set forth several and distinct stints or *modus* for the several tenements, being above forty in number, in lieu of tithe hay and wood arising upon their said several tenements in *Staplefitzpaine* aforesaid, and several of them varying from the plaintiff's answer to the original bill,

The matter requiring so many issues, the Court refuse to grant any trial.

THIS COURT doth not think fit to direct so many several trials at law.

The rector dismissed from the cross bill.

IT IS THEREUPON ORDERED by the Court, that the said defendant *Snow* be, and he is hereby dismissed from the cross bill, without prejudice to the said pretended *modus* for hay and wood, if any such there be, and with moderate costs.

The remembrancer's report.

The deputy remembrancer made his report dated the eleventh of *November* instant; and upon reading the said decree and report,

report, without exceptions, it is ordered, that the said report be ratified and confirmed; and that the said defendants *Hewitt* and *Poole* shall severally pay to the said plaintiff the respective sums reported due, viz. three pounds, seventeen shillings, and fourpence, and three pounds, eleven shillings, and threepence, for the tithes.

SNOW
against
HEWITT
AND OTHERS;
et c. Contra.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.

LEACH *against* DEACON and WATTS.

TRIN. TERM,
8. WIL. 3.

Bedfordshire, 8th July 1696.

THE plaintiff, as rector of the rectory and parish-church of *Overstand*, in the county of *Bedford*, stated, that by constant usage in the said parish, time out of mind, tithes in kind, together with such compositions as follow, were paid by the inhabitants and other occupiers of lands within the said parish, and accordingly enjoyed by the plaintiff and his predecessors, rectors of the said parish: FIRST, Corn and grain by the sheaf and cock, viz. every tenth sheaf and cock; the hay to be tithed in grass cocks.—SECONDLY, Tithe wool at shearing day, for all sheep kept within the parish from shearing day to shearing day; and fourpence a score for every month till shearing day, for all sheep bought and brought into the said parish before shearing day, and shorn within the said parish, for the growth of such wool, in lieu of the tithe thereof; and also fourpence a month for every score of sheep kept within the said parish, and sold before shearing day, to be accounted from the shear day next before; and so proportionably for a greater or lesser number of sheep and space of time, in lieu of the tithe wool thereof; for every lamb yeaned within the said parish, threepence, payable on every *Saint Mark's Day* yearly, both by farmers and cottagers within the said parish, in lieu of all tithe lambs.—THIRDLY, Tithe pigs in kind payable at three weeks old; and if, upon notice, the rector should refuse or neglect to receive them in kind, then the owner thereof to pay twelvecpence, in lieu of all such tithe pigs.—FOURTHLY, And for the tithes of calves sold to be killed, the tenth penny for which such calf is sold, payable at the time of the sale thereof; and if any killed by the owner thereof, the right shoulder of such calf so killed hath always been delivered to the rector there, in lieu of the tithe thereof; and for every calf weaned for store, one halfpenny payable at the time of such weaning; and no more tithes to be paid for such calves, or other young cattle, till they give milk or be fatted.—FIFTHLY, Tithe pigeons in kind.—SIXTHLY, And in lieu of tithe eggs and young fowls, three eggs for every cock and drake, and two eggs for every hen and duck; and in like

The manner of
paying tithes to
the rector of
Overstand, in
the county of
Bedford, esta-
blished.

LEACH
against
DEACON AND
WATTS.

manner for geese and turkeys.—SEVENTHLY, For every milch cow, threepence, in lieu of tithe milk.—EIGHTHLY, For every fattening beast, threepence, in lieu of the tithes thereof.—NINTHLY, One penny, called a smoke penny, payable yearly by every householder inhabiting within the said parish, in lieu of tithe wood by them cut and burnt, or spent within the said parish; and if any such inhabitants have bought or had any wood which grew within the said parish of any person or persons inhabiting in any other parish; and spent the same in the parish of *Overstanden* aforesaid, the person or persons of whom such wood hath been bought or received hath always paid the tithe thereof in kind.—TENTHLY, And one penny, called a garden penny, in lieu of herbs and garden fruits, payable at *Easter* yearly; and tithes in kind of all other fruits, payable at the time of the gathering thereof.—ELEVENTHLY, And in lieu of tithe honey, the tenth penny for which all bees are sold within the said parish, to be paid at the time of the selling thereof.—That the said defendants, being well satisfied that the rate tithes were due, about *Easter* 1695 came to an account with the plaintiff, and adjusted the same; and there remained due to the plaintiff from the defendant *Deacon* five pounds, ten shillings, and from the defendant *Watts* eight shillings, which they promised to pay.

The defendant *Deacon* said, that about *Lady Day* 1693 he rented a farm in the said parish, and paid the plaintiff all tithes of corn, grain, hay, wool, pigeons, and fruit, ever since, and was always ready to pay all his other tithes and dues, according to the ancient usage, in the said parish, if the plaintiff would have received the same according to the rates set forth in the bill. He confessed, that about *Easter* 1695, he came to an account with the plaintiff for all manner of tithes due to him before and at *Easter*, and that the balance, as stated in the bill, was due, which he agreed, and is ready to pay with a legal discharge, and to observe the ancient usage of tithing, as in the bill is alledged,

The defendant *Watts* said, he was under-tenant to the other defendants of a tenement, and was ready and willing to pay the said rates and dues; and confessed the balance due to the plaintiff as in the bill, and said, that he is ready and willing to pay the same, and all future tithes and rates.

The cause came on to be heard upon bill and answer, pursuant to an order, dated the twenty-seventh of *June* last; and upon opening the pleadings, and hearing counsel, and on debate of the matter,

IT IS ORDERED AND DECREED, that the defendants shall forthwith pay to the plaintiff the said sums of five pounds, ten shillings, and eight shillings, as in the bill is alledged to be due, but without costs; and that the defendants shall, for
the

the future, continue the payment of all their tithes, according to the rates set forth in the bill and answers.

LEACH
against
DEACON AND
WATTS.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWLS.

FIFIELD *against* SQUIRE and his Wife.

HILARY TERM
8. WIL. 3.

Nottinghamshire, 11th February 1696.

THE bill stated, that for twenty years past the plaintiff was instituted and inducted into the vicarage of *East Drayton cum Membris*, in the county of *Nottingham*, whereof *Askeham* is a member, and had duly performed the cure of both places, and by reason thereof was legally entitled to all tithes of flax line seed, rape seed, hops, milk, fruit, roots, pasturage tithes, and all other small tithes, oblations, obventions, offerings, dues, duties, and customary payments, arising within the said parish of *Askeham*, and the titheable places thereof; that *W. Sandys*, late of *Askeham*, deceased, and the defendant *Margaret*, his daughter and executrix, and the defendant *Squire* and his wife, since their intermarriage, were occupiers of several lands and grounds within the liberties of *Askeham* for thirteen years past, and had several titheable matters therein, the tithes of which ought to have been paid to the plaintiff.

The demesne lands of the archbishop of York, lying in the parish of *Askeham*, in the county of *Nottingham*, are freed from the payment of small tithes to the vicar of *Drayton cum Askeham*, in the said county.

The defendants confessed the plaintiff to be lawful vicar of *East Drayton cum Membris*, as in the bill is stated, and said, that the said *W. Sandys*, in his life-time, was an inhabitant and occupier of a messuage and lands in *Askeham*, and that the same, for the time whereof the memory of man is not to the contrary, have been part of the possessions and demesnes of the *Archbishop of York*, and that he, his lessees, and tenants, and their undertenants and farmers, have always held and enjoyed the premises, freed and discharged from the payment of all manner of tithes to the vicar of *Drayton* or *Askeham*.

An issue was directed to try, "Whether the demesne lands of the *Archbishop of York*, lying in *Askeham*, be discharged from the payment of all small tithes to the vicar of *Drayton cum Askeham*, or not?"

An order of the ninth of *February* instant was made, that one *R. Stannyland*, a witness examined on behalf of the plaintiff, should attend, at the hearing on this cause, to explain his deposition to the ninth interrogatory concerning the value of the tithe of the hops; who, being now sworn in court, deposeth, that the tithe of the hops were worth between three or four pounds a-year for seven years.

FIFIELD
against
SQUIRE AND
HIS WIFE.

In pursuance of the above order a trial was had, and a verdict found for the defendants, viz. that the lands in the defendant's possession were exempt from payment of tithes, and every thing in lieu thereof, to the vicar of *Drayton cum Askham*.

THE COURT accordingly, on the sixth of *May* 1696, ordered and adjudged, that the said bill be dismissed.

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.
JOHN BLENCOWE.

HILARY TERM
3. WIL. 3.

MARWOOD against LOWTHER and Others.

Yorkshire, 19th February 1696.

The plaintiff, as rector of *Great Ayton*, in *Yorkshire*, and as chief lord of the lordship of *Marton*, in the said county, claims, as rector, 6s. 8d. a-year, in lieu of the mulcture of a *water corn mill*, and, as chief lord, 6s. a-year for quit rent.

THE bill stated, that the plaintiff, for eighteen years past, had been seised in fee of the rectory impropriate and church of *Great Ayton*, in the county of *York*; that during the said time, and before, there hath been a *water corn mill*, whereof the defendant *Lowther* is owner; and that six shillings and eightpence ought to be paid at *Easter*, or some other day, yearly, as a *modus* in lieu of the tithes of the mulcture of the said mill; that about six years ago the defendant demised the said mill to the defendants *Austin* and *Maston*, who held and enjoyed the same, and ground corn and grain, and ought to have paid the said *modus* of six shillings and eightpence yearly in lieu of tithes. The bill further stated, that the plaintiff, for the same time, had been seised in fee of the hundred or wapentake of *Langburgh*, as chief lord thereof; and that the lordship or township of *Marton* within the said hundred, or some lands therein held and enjoyed by the defendant *Lowther*, have been held of the lords of the said hundred or *wapentake*, by suit of court, and by the annual rent of six shillings payable to the lord at *Michaelmas*, or some other time in the year, at one payment. The bill therefore prayed, that the defendants may account for the tithes of the mulcture of the said mill, or pay six shillings and eightpence a-year for the time they had held the same; and that the defendant *Lowther* may also account for the said six shillings a-year for his lands in *Marton*.

The defendant denies the existence of the *modus*, and of the chief rent.

The defendant *Lowther* confessed the plaintiff to be seised of the said rectory and wapentake; and that he had been seised, as in the bill is stated, of an *ancient water corn mill* in the said parish, and had either occupied or let the same ever since; and that the other defendants have farmed the same for about four years past; but he denied that he ever knew that six shillings and eightpence was due or paid as a *modus* for the tithe of the mulcture of the said mill. The defendants all confessed, that the plaintiff is seised of the manor of *Marton*, and hath for several years received the

the rents thereof; but denied that they knew of any yearly rent of six shillings due as a chief rent to the plaintiff out of the manor of *Marton*.

MARWOOD
against
LOWTHER
AND OTHERS.

The defendants *Austin* and *Maston* confessed, that the plaintiff is owner of the said rectory, and thereby intitled to tithes, but said, that they had never heard of any tithes paid for the mulcture of the said mill, or six shillings and eightpence in lieu thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs, and on full debate,

IT IS ORDERED, that the said bill, as to the demand of six shillings for the manor of *Marton*, shall be and is hereby dismissed. The bill dismissed as to the chief rent;

And as to the plaintiff's demand of six shillings and eightpence for the tithes of the defendant *Lowther's* mill lying in *Great Ayton* aforesaid, an issue was directed to try, "Whether there is, and time out of mind hath been, a *modus* or customary payment of six shillings and eightpence due and payable to the plaintiff, as owner and impropiator of the rectory of *Great Ayton*, for the tithes of the mulcture of the *water corn mill* of the defendant *Lowther* lying in the said rectory, or not?" Upon which trial the jury found, and gave their verdict for the plaintiff, in affirmance of the said *modus*. and an issue directed to try the *modus*: on the trial of which the *modus* is proved,

IT IS ORDERED, on the twenty-sixth of *January* 1698, that it be referred to the deputy remembrancer (a) to compute the arrears of the said *modus* of six shillings and eightpence for the time demanded by the bill, and to report the same, and to tax the costs of the plaintiff. and the payment of it decreed.

(a) ROBERT BARKER, Deputy Remembrancer.

BELL and Others against CURSON.

HILARY TERM,
8. WIL. 3.

Norfolk, 19th February 1696.

THE bill stated, that the plaintiff *N. Bell* is lawful impropiator, and seised in fee of the impropiation of *Oldton*, otherwise *Oldton*, in the county of *Norfolk*, excepting such part as is after mentioned; that he is also seised in fee of several lands and tenements in *Oldton*; that the rest of the plaintiffs are likewise seised in fee of several lands and tenements there, and are impropiators or owners of the *great tithes*, and of the tithe of *hay* therein; that the defendant, as vicar of *Oldton*, is only entitled to *small tithes*, excepting the tithe of *hay*; that the said vicar exhibited

The manner in which the vicarial tithes of the parish of *Oldton*, in the county of *Norfolk*, shall be paid.

**BELL
AND OTHERS
against
CURSON.**

exhibited his bill in this court against *N. Bell* (a), and amongst other things claimed tithe of hay arising within the said parish; to which bill *N. Bell* answered, and denied, that the vicar was entitled to tithe hay; and insisted upon several customs or manners of tithing used therein time out of mind; which customs are as follow: **FIRST**, That all the inhabitants of the said parish of *Oldton*, having ten calves in one year, have used, and ought to pay to the vicar one calf; and such as have seven to pay one calf; and in such case, the vicar is to pay the owner fourpence halfpenny; and such as have under seven in one year, to pay the vicars three halfpence for every such cow and calf, and no more, in full satisfaction and recompence of and for the herbage, tithes, and other duties for the same; which money so payable the vicars for the time being have taken and accepted in full satisfaction for herbage tithe, and other duties; **SECONDLY**, that all the inhabitants therein depasturing heifers, steers, or bullocks, fallow cows, colts, and foals, or having any garden or orchard planted with fruit, or having any wood growing or felled for firing, have used to pay yearly to the vicar for the time being, upon the first day of *August* in every year, if the same were then demanded, at the house of such inhabitant, or afterwards upon request, in full satisfaction for all tithe herbage and other duties which might be claimed for the same, viz. for every such heifer, or steer, or bullock, twopence; for every fallow cow, twopence; for a colt, twopence; for a foal, one penny; for an orchard or garden, fivepence; and for fire wood, one penny; all which sums of money have been, from time to time, accepted and taken by the vicar in full satisfaction for the tithes and dues claimed by him; **THIRDLY**, that, time out of mind, tithe wool and lamb hath been paid to the vicar for such sheep only as were shorn in the said parish: all which customs and tithings the plaintiff *Bell* fully proved in the said cause, and hoped the defendant would not have claimed tithe hay, for that upon hearing the said cause the bill of the said *Curson*, as to the demands of tithe hay, was dismissed; that forasmuch as the witnesses, that were examined on the part of *Bell* did fully prove the customs as before set forth, are dead, and the plaintiffs cannot have the benefit of the depositions taken in the said cause as to tithe hay and customs,

(a) This bill came on to be heard on 20th February 1690, Hilary Term, s. Will. & Mary. The vicar claimed from the impropriator an annual pension of three pounds, and the tithes of hay, wool, lamb, herbage, fruit, Easter offerings, and other duties, which the impropriator had taken and received. The impropriator denied the vicar's right to the pension, but said it had been paid to him in lieu of small tithes: he also denied his right to the tithe of hay, but ad-

mitted there were several customary payments due to him in lieu of small tithes, which the vicar had refused to accept, without having an allowance also for the said pension. The Court decreed, that the impropriator should, for the future, pay the said pension to the vicars of *Oldton*, and likewise account for the customary payments according to his answer; but as to the claim of tithe hay, the vicar's bill was dismissed.

not

nor preserve the testimony of their witnesses that are yet living *in perpetuam rei memoriam*, nor establish the customs of the parish, or settle the right of the impropriators and vicar for the prevention of future disturbances, but by the aid of this court, the bill therefore prayed that the defendant may answer whether he did not exhibit such bill for tithe hay, &c. and if not dismissed at the hearing as to the tithe hay? and, whether the customs of the said town of *Oldton* be not the same as before set forth? or, what are the customs and manner of tithing within the said parish, as to cows, calves, heifers, steers, bullocks, fallow cows, colts, foals, sheep, lambs, wool, orchards, gardens, firewood, or any of them, or other titheable matters payable to the vicar of the said parish; and also set forth the several rights belonging to the impropriator and vicar; and that the plaintiffs may be relieved as to tithe hay, and the custom and manner of tithing be settled by the decree of this court.

BELL
AND OTHERS
against
CURSON.

The defendant insisted. that, as vicar of the said parish, he was entitled to the tithe of hay, and to all other small tithes.

The plaintiffs replied; the defendants rejoined; and several witnesses were examined; and upon reading several depositions of witnesses taken in the cause, and on great debate, the defendant's counsel insisting that the bill ought to stand dismissed as to tithe hay, in regard there is no pretence that the defendant occupied any lands for which hay was titheable to the plaintiffs.

IT IS ORDERED AND DECREED, that the several customs and manner of paying small tithes in the bill mentioned (except that as to the payment of wool and lamb, concerning which the Court thinketh not fit to make any decree), be and are hereby established, by the decree of this court, to be for ever hereafter observed by the inhabitants and vicar of the said parish of *Oldton* for the time being.

And as to the payment of the tithe hay, an issue was directed to try. "Whether the tithes of hay arising within the said parish of *Oldton* do belong to the plaintiffs, as impropriators of the rectory impropriate of *Oldton*, or not?" All parties to be bound by such trial. On which trial a verdict was given for the defendant.

THE COURT accordingly ordered, on the twenty-first of February 1698, that the bill (so far forth as it relates to the payment of tithe hay to the plaintiffs, as impropriators of the said impropriate rectory of *Oldton*) shall stand dismissed this court with costs.

EDW. WARD.
LITTLETON POWELL.
HEN. HATSELL.

PEIRSON

TRIN. TERM,
9. WIL. 3.

PEIRSON *against* HOSKERTON.

Lincolnsbire, 21st June 1697.

The impropriator of *Holbeach*, in *Lincolnsbire*, claims tithe of lambs, and insists, that they shall be taken from the dams before *Lammas Day*.

THE plaintiff, as farmer of the impropriate rectory of *Holbeach*, in the county of *Lincoln*, claimed the tithes of wool and lamb arising therein; and stated, that the lambs yeaned and brought forth in the said parish are not, according to the usual course of husbandry there, fit to be weaned and taken from their dams before the first day of *August* yearly, or near about that time; that the defendant, since the twenty-ninth of *March* 1691, occupied and enjoyed meadow and pasture ground, and kept sheep thereupon, from which he had yearly lambs, and from which he clipped and shored wool, for which he ought to have paid tithes to the plaintiff at the usual time of tithing thereof.

The defendant says, that by the custom of the parish the tithe of lamb ought to be paid about *Midsummer Day*.

The defendant said, that, for many years before the plaintiff was farmer, the parishioners generally compounded for their tithes, and therefore the customary and ancient way of tithing of lambs had been greatly neglected and altered; that the ancient customary time of setting out and delivering tithe lambs there was on or about *May Day*; and that they were usually paid at *clipping day*, which is generally about *Midsummer Day*.

The plaintiff replies, it ought to be at *Lammas Day*.

The plaintiff replied, and thereby abridged the demands of his bill, and only proceeded for the tithes of the defendant's lambs in the year 1695, which he insisted ought, by the custom of the said parish, to be set out and paid at *Lammas Day*, and not at *shearing day*, or any other time before *Lammas Day*; and discharged the defendant of all other demands in the bill.

The defendant says, at *clipping time*.

The defendant rejoined, and said, that tithe lambs were not, by custom of the said parish, to be set out at *Lammas Day*, but at *clipping time*.

Upon reading several depositions on both sides, and on debate,

An issue directed to try, whether the tithe ought to be paid on *Lammas Day*, and not before.

An issue was directed to try, "Whether there be a custom within the parish of *Holbeach* that tithe lambs ought to be set out and paid at *Lammas Day*, and not before?" to be tried by a special jury; and if any impropriator be returned upon the said jury, it is to be allowed a just cause of challenge.

A verdict for the defendant.

On the said trial, a verdict was, upon full and long evidence, given for the defendant, "That there is not, nor time out of mind has been, a custom within the parish of *Holbeach*, that tithe lambs arising, renewing, and happening within the said parish, should be set forth and paid for upon the first day of *August* called *Lammas Day*, and not before the same day."

THE

THE COURT accordingly ordered and decreed the defendant to pay to the plaintiff fourteen shillings for the value of the two lambs in question, according to the defendant's tender in his answer; but as to all the other demands, and the custom alledged and mentioned in the said bill, it is further ordered, that the said bill shall be dismissed, with costs, to be taxed by the deputy remembrancer of this court (a).

PEIRSON
against
HOSKERTON.

EDW. WARD.
N. LECHMERE.
LITTLETON POWIS.
J. BLENCOWE.

(a) See other causes, Mich. Term, 5. Geo. 1.; Trinity Term, 7. Geo. 1.

Mich. Term, 9. Geo. 1.; and Hilary Term, 11. Geo. 1.

WHARTON against TURBERVILLE and Others.

TRIN. TERM,
9. WIL. 3.

Berkshire, 2d July 1697.

THE bill stated, that *Queen Elizabeth*, being seised, in the right of the crown, of the manor of *Cookham*, in the county of *Berks*, by her letters patent dated the fourth of *May*, in the thirty-ninth year of her reign, granted the agistment of pasture in certain grounds, part of the said manor called *Withybrook* and *Cookham Marsh*, to *R. Bird*, *R. Deane*, and *T. Dodson*, for their lives and the life of the longest liver of them, under the rent of two pounds, one shilling, a-year; that the said grant was made in trust for the advantage of the parishioners and inhabitants of the parish of *Cookham*, for the depasturing of their commonable cattle therein; that the said parishioners, by virtue of such grant, agisted in their turn in the said ground, called *Withybrook*, eighty-two head of cattle, paying yearly sixpence for each head, which made up the sum of two pounds, one shilling; that *King James the First*, by his letters patent dated the twentieth of *November*, in the twenty-first year of his reign, granted to *Sir Henry Vane* the said agistment of pasture in the said grounds for thirty-one years, to commence from the determination of the preceding grant, at the said rent; that the said *Sir Henry Vane's* interest to the said agistment of pasture in the said grounds so granted, by divers mesne assignments of the said term, being vested in one *W. Tayleur*, the said *W. Tayleur* did surrender up the said letters patent to his late majesty *Charles the Second*, who, by his letters patent under seal of his court of exchequer dated the seventeenth of *February*, in the twenty-sixth year of his reign, granted, demised, and to farm let to *W. Herbert* all those lands and closes of pasture called *Withybrook* and *Cookham Marsh*, otherwise *Cock Marsh*, parcel, or reputed parcel of the said manor of *Cookham*, with all agistments, pastures, profits, commodities, and appurtenances, to the said lands, &c. to have and to hold for thirty-

The plaintiff, as grantee of the crown of the manor of *Cookham*, in the county of *Berks*, claims certain rates for agistment of pasture in certain grounds called *Withybrook* and *Cock Marsh* within the said manor.

WHARTON
vs.
 TURBERVILLE
 AND OTHERS.

thirty-one years, which were so made and granted at the petition of and in trust for the said *W. Tayleur*; that the said *W. Herbert*, in performance of the said trust, by deed dated the fifteenth of *April*, in the thirtieth year of his said majesty's reign, assigned the said premises, and all his estate therein, to the said *W. Tayleur* and *Frances* his wife, for the residue of the said term, who, by indenture dated the fifteenth of *April*, in the thirty-fourth year of *Charles the Second*, for the consideration therein mentioned, assigned the said premises, &c. to *S. Gwillin*; which last recited indenture was made to and in the name of the said *S. Gwillin*, in trust for the plaintiff; that *S. Gwillin* being dead, the defendant *Elizabeth Gwillin*, his executrix, had combined with the other defendants, who pretend to a right of common in the said premises, to defeat the plaintiff of the profits thereof. The bill therefore prayed to be relieved in the premises.

Some of the defendants claim right of common in *Withybrook* from *Lammas Day* to *Lent*.

The defendants *Ray*, *Lee*, *Bennett*, and *Binefield*, by their answers, confessed the substance of the bill to be true; but said, they claimed a right to put their cattle into the ground called *Withybrook* from *Lammas Day* until the first Sunday in *Lent*; and that they were willing to submit to such decree as the Court shall make to raise the monies for the plaintiff.

The other defendants claim the same right of common in *Cock Marsh*.

The defendants *Towers*, *Flatt*, *Read*, *Dodson*, and *Turberville*, insisted upon their right of common in the said premises in this manner, viz. that, time out of mind, the said ground, called *Cock Marsh*, had been common to the parish of *Cookham* for the whole year, and that *Withybrook* had been yearly severed from the first Sunday in *Lent* until the third of *May*; that the cattle of the inhabitants of *Cookham* have been taken into the said *Withybrook* to pasture at these rates, viz. for every cow, sixpence; for every ox or horse, eightpence; for every bullock and colt, fourpence; which have continued there, at the will of the owners, until *Lammas Day*; and from *Lammas Day* the said ground, called *Withybrook*, had been, time out of mind, common to all the inhabitants of *Cookham* all the year after.

The bill dismissed with costs.

The defendant *Elizabeth Gwillin* confessed the charges in the bill to be true.

The plaintiff replied to the answers of *Towers*, *Flatt*, *Read*, *Dodson*, and *Turberville*; the defendants rejoined; and witnesses were examined on both sides; and upon full debate,

IT IS ORDERED, that the bill shall be dismissed with costs as against the defendants *Turberville*, *Towers*, *Flatt*, *Read*, and *Dodson*, to be taxed by the deputy remembrancer of this court.

WARD, Chief Baron.
 POWIS, Baron.
 BLENCOWE, Baron.

LAYFIELD

LAYFIELD *against* ENTICKNAPP.HILARY TERM
9. WIL. 3.

Surry, 3d February 1697.

THE rector of *Chiddinfold*, in the county of *Surry*, claimed tithes of sheep and lambs.

The defendant insisted on a custom to pay threepence a piece for all lambs yeaned and fallen before the feast of *Saint Mark* that were sold before the said feast day, and to pay tithe in kind for such as were not sold before that day ; but in case there be but seven, then to pay the seventh ; but where there are under seven, then to pay threepence a-piece.

The cause was heard on the eighteenth of *November* last, and an issue directed to try the custom ; but the plaintiff, being unwilling to try the same, moved, on the thirtieth of *November*, for a rehearing, which came on this day ; when

THE COURT unanimously agreed, that the said custom was not a good one, and that there ought to be no trial at law.

EDW. WARD.
N. LECHMERE.
LITTLETON POWIS.
HEN. HATSELL.

SILATER *against* MARSHALL.EASTER TERM,
10. WIL 3.

Cambridgeshire, 30th May 1698.

THE rector and vicar of *Gamlingay*, in the county of *Cambridge*, stated, that the defendant, ever since the year 1696, had been owner of a close of pasture near *Warresly Church*, for which a rate tithe of one shilling and sixpence a-year had been formerly paid (when tithe in kind was not paid).

The defendant confessed, that he held the said close called *Parsonage Close*, but denied that it was in the parish of *Gamlingay*, or the titheable places thereof, or that any rate tithe of one shilling and sixpence a-year, or any other rate or composition, was payable for the same to the rector of *Gamlingay*.

The *parsonage Close* near *Warresly* church, in the parish of *Gamlingay*, pays a tithe of 18d. a year to the rector of *Gamlingay*.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides.

THE COURT decreed the defendant to pay the rate tithe of one shilling and sixpence, in lieu of tithes, for the said close, for the time in the bill mentioned, amounting to eighteen shillings.

EDW. WARD.
N. LECHMERE.
LITTLETON POWIS.
HENRY HATSELL.
HAYWARD

EASTER TERM,
10. WIL. 3.

HAYWARD *against* ARCHER and Others ;

AND

OVERBURY and Others *against* HAYWARD.

Warwickshire, 30th May 1698.

The manner of tithing in the parish of Barton, in the county of Warwick, settled by the award of Sir Robert Atkyns, and confirmed by the Court.

THE object of these bills was to have the manner of tithing within the rectory and parish of *Barton upon the Heath* (whereof the plaintiff was rector) settled and established by a decree of this court.

THE COURT (for the mutual quiet and ease of all parties) proposed, that all matters in difference should be referred to *Sir Robert Atkyns, Knt.* (the late Lord Chief Baron) he being a neighbour of the said parties, finally to end and determine the same ; and the proposal being accepted and agreed to on both sides, and ordered by the Court, and *Sir Robert Atkyns, Knt.* having been attended, and having heard the parties on both sides concerned, upon the eighth day of *August* last, made his award in writing, under his hand and seal, as follows : FIRST, That there was no *modus* or custom of tithing as in the answers is alledged ; but that all tithes are to be paid in kind ; and particularly that the tithes of all *furze* sold are due and payable to the rector. SECONDLY, That for three breeders which the defendants by their answer alledge to be tithe free, tithes ought to be paid for the same, unless they are bred for the plough or pail. THIRDLY, That for the depasturing and feeding of dry beasts there ought to be paid to the rector two shillings in the pound of the yearly rent or value of the grounds and lands upon which the said beasts are depastured and fed, deducting and allowing, in proportion to the profitable cattle fed upon the said grounds, if any profitable cattle shall be there depastured and fed. FOURTHLY, That all tithes for sheep and lambs which are depastured and kept within the parish are of right due and payable in kind to the rector. FIFTHLY, To prevent future differences between the said rector and his parishioners, and for a final end to be made between the said parties, the defendants *Archer, Williams, Paxford, Lambert, and Spicer*, shall pay to the rector, for tithes by them severally due from the first of *November* 1694 to the twenty-fourth of *March* 1695, being the time mentioned in the bill, the several sums of money hereafter mentioned, that is to say, the defendants *Archer*, two pounds, eleven shillings ; *Williams*, one pound, ten shillings, and tenpence ; *Paxford*, ten shillings ; *Lambert*, one pound, ten shillings, and sixpence ; and *Spicer* one pound and sixpence ; and that the defendant *Diston* do and shall satisfy and pay to the said plaintiff ten pounds, sixteen shillings, for the tithes due by him for the time mentioned in the bill. SIXTHLY, That the defendants shall pay to the rector, for costs and

charges of the said suit wherein they are defendants and the rector plaintiff, the sum of forty-four pounds in money. SEVENTHLY, That the cross bill be dismissed; and that the plaintiffs shall pay to the defendant twenty-six pounds in money; and EIGHTHLY, that the rector, upon the receipt of the several sums of money ordered to be paid to him for tithes and costs of suit, shall give to them respectively acquittances and discharges.

HAYWARD
against
ARCHER
AND
OVERBURY
against
HAYWARD.

R. ATKYNS.

Upon reading the order of the thirtieth of *May* last, and the said award; also several affidavits of the defendants endeavouring to impeach the award;

IT IS ORDERED AND DECREED, that the said award be and do stand ratified and confirmed by the authority of this court, and that the same shall be observed, executed, and performed by all parties; and that the said defendants do forthwith severally pay to the plaintiff the several sums appointed to be paid in and by the said award.

The award confirmed.

EDW. WARD.
N. LECHMERE.
LITTLETON POWIS.
HEN. HATSELL.

CALLOW *against* VINES and POWELL.

Wiltshire, 7th July 1698.

TRIN. TERM,
10. WIL. 3.

THE bill stated, that the plaintiff, since *December* 1693, had been, and then was rector of the parish-church and rectory of *Somerford Parva*, in the county of *Wilts*, and entitled to all tithes in kind; that the defendant *Vines* was, in 1694 and 1695, occupier of a farm and lands called *Mauditt's Park Farm*, and also of two closes called *Sandey Lease* and *Fearney Lease*, and other lands which were no part of the said park; and that upon the said farm and lands the defendant had yearly cut hay, and corn, and had cows, sheep, calves, lambs, wool, and other tithes of great value; that the defendant *Powell* was owner of the farm and lands aforesaid, and had set up a *modus*. The bill therefore prayed a discovery of the *modus*, and of the quantities, qualities, and values of the tithes, and for an account,

The lands called *Mauditt's Park Farm*, in the parish of *Little Somerford*, in the county of *Wilts*, pay a *modus* of 40s. a-year to the rector, in lieu of tithes.

The defendants said, that the owners and occupiers of *Mauditt's Park Farm* have, time out of mind, been discharged from the payment of tithes in kind, and have paid forty shillings only in lieu thereof; and that the defendant *Powell*, and all those whose estate he and his trustees now have therein, have been freed from the payment of tithes in kind, or any thing in lieu thereof,

CALLOW
against
VINES AND
ANOTHER.

save on'y the said forty shillings a-year ; and insisted to be discharged thereof.

The defendant *Vines* confessed, that he occupied *Sandey Lease*, and believed the two closes were part of *Mauditt's Farm*, and not a late addition thereto.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined.

The defendant *Vines* died, and left his son executor, who filed a *bill of revivor*, and admitted assets ; and by an order made the ninth of *June* last, the proceedings were revived.

On reading the proofs on both sides touching the *modus* insisted upon by the defendants in their answer, an issue was directed to try, whether there be a *modus* of forty shillings a-year payable to the rector of *Somerford Parva*, for and in lieu of the tithes of *Mauditt's Park Farm*, or not ? and on the trial a verdict was found for the defendants ; but MR. BARON HATSELL having, according to the order of the Court, on the sixth of this instant *May*, spoken with the judge of assize who tried the said cause, and reporting that the said judge declared that the same was proper for re-examination, a new trial was ordered to be had, on costs, upon the same issue, only adding " or any " and what part thereof, or not ? " But the plaintiff not having complied with the above order for the new trial, by not paying costs, the cause was put in the paper of causes for further directions at the defendant's request, and no counsel appearing for the plaintiff,

It was now, on the twenty-seventh of *November* 1699, finally ORDERED AND ADJUDGED, that the defendants stand absolutely dismissed this Court from the said bills, viz. the original bill and the bill of revivor.

EDW. WARD.
LITTLETON POWIS.
HEN. HATSELL.

MICH. TERM,
10. WIL. 3.

GEE against PEARCH.

Kent, 17th November 1698.

The manner of
tithing hops in
the parish of
Orpington, in the
county of *Kent*.

THE plaintiff, as farmer of the rectory and parsonage of *Orpington*, in the county of *Kent*, stated, that the defendant had, for five years last past, been occupier of a great farm, consisting of arable land, hop-grounds, wood, and underwoods, which he had ploughed and sown with grain of all sorts, and planted with hops, and from which he had felled divers acres of underwood, alder trees, and ash trees, under twenty years growth,

growth, and had barked and flawed great quantities of bark from the said trees, and had paid no tithes for the same.

GEE
against
PEARCE.

The defendant said, that the tithes of hops or wood belonged to the vicar; that he had several times peeled, barked, and flawed several alder trees for hop poles, but that the bark was of small profit; that as to hops, there was *a modus* to pay ten shillings an acre in lieu of the tithes thereof; that tithes of the toppings of the timber trees were not due, nor for the stackwood used in his family; that he had grubbed several quantities of woodland which he had sown with corn, and also several roods of barren ground which yielded no profit, and had sowed the same with pease; and that no tithes ought to be paid for such lands by the statute 2. & 3. *Edw. 6. c. 13. s. 5.* for seven years.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

THE COURT declared, that the custom of paying ten shillings an acre for the tithe of hops is a void custom and not warranted by law; and therefore decreed, that the defendant ought to account for the same, according to the value of the tenth part of the said hops, when the same were pulled from the bine or stem, at which time the tenth part is severable from the ninth parts, and the tithes by law payable. That the reason assigned for the non-payment of tithes of corn sowed upon grubbed ground, is no good discharge, but that tithes in kind, or some composition ought to be paid to the plaintiff for the same. That tithes ought to be paid for the hop-poles growing upon the premises, which he used in polcing his hops. That the tithes of the bark of the alder-poles and hurdle-rods and of woad or woald, as offered by the answer, are to be paid in kind, and delivered by the defendant upon the plaintiff sending for them.

IT IS ORDERED by the Court, that the said defendant shall and do forthwith pay to the said plaintiff the sum of ten pounds in full of his tithes of hops, hurdle rods, bark of alder trees, cords of wood and pease, and in full discharge of the sum of eleven pounds, seven shillings, and threepence, reported due (a).

EDW. WARD.
NICH. LECHMERE.
LITTLETON POWIS.
HEN. HATSELL.

(a) See the case, and the opinion of 97. *Greenaway v. Earl of Kent*, Rayn. Barons, *Gee v. Pearce*, post. 11th May 161. and post. Hilary Term, 4. Anne. 1704, Easter Term, 3. Ann. Rayn. 89.

TRIN. TERM,
11. WIL. 3.

BURGES *against* REEVE.

Sussex, 5th July 1699.

The rector of
Witbiam, in *Sus-*
sex, demands the
tithes of *Whit-*
tendon Lodge.

THE plaintiff stated, that for five years last he had been rec-
tor of the parish church of *Witbiam*, in the county of
Sussex, and entitled to all predial, personal, and mixed tithes,
and duties arising, within the said parish, and the titheable
places thereof; that the defendant, during the said time, was
and is occupier of a house, farm, and land, from which he had
carried away the titheable matters, and converted them to his
own use.

The defendant
says, that the said
Lodge was for-
merly part of *Asb-*
down Forest, and
that part of the
lands lie in the
parish of *Buxton*,
and are tithe
free, as having
been the demesnes
of the crown,

The defendant answered, that he occupied a house called
Whittendon Lodge, with several acres of land, heretofore part of
Asbdown Forest, otherwise called *Manchester Great Park*, and had
been informed, that the said house is within the parish of
Witbiam, but what part of the lands do lie in the said parish,
and what in the parish of *Buxton*, he knows not, but he hoped
to prove that they were *tithe free*; for that the said messuage
and farm were part of *Asbdown Forest*, otherwise called *Manchester*
Great Park, and were part of the demesnes of the kings of *Eng-*
land, and by them enjoyed until the civil wars, and then were
disafforested, disparked, and inclosed, by the proprietors who
claimed the same; that by a decree of the dutchy chamber, made
the eighth of *July 1683*, the said forest was divided between the
proprietors, and the inclosures settled, and the commoners had
their common allotted to them; that until the said disafforestation
and disparking, the kings and queens of *England*, and their
tenants and farmers did enjoy their lands and tenements within
the said forest and park, time out of mind, freed and discharged
from the payment of tithes; that since the said disafforestation and
disparking of the said forest or park, the tenants have all enjoyed
the premises *tithe free*; that he hoped to prove that the lands
in question before the inclosures and improvements, and all the
time, were such barren heath and waste ground, that it ought
to have the privilege of the statute 2 & 3. *Edw. 6. c. 13. s. 5.*
not to pay tithes until the end of seven years after the
improvement.

or barren lands.

The plaintiff replied; the defendant rejoined; and several
witnesses were examined on both sides; and on reading the
depositions, and an *inspeximus* of a record, in the third year of
James the First.

The defendant
decreed to pay
tithe for so much
as is within the
parish of *Wi-*
tbiam.

IT IS ORDERED AND DECREED BY THE COURT, that the de-
fendant shall pay to the plaintiff the tithes of the farm and
lands in his occupation, which are part of *Asbdown Forest*, and
do

do lie within the parish of *Withiam*, for all the time demanded by the bill, and also account for *Easter* offerings.

BURGESS
against
REVER.

A commission was directed to ascertain what lands in the defendant's occupation, in the *Forest of Asbdown*, do lie within the parish of *Withiam*, and what in the parish of *Buxton*.

A commission
issued to ascertain
the same.

The said commissioners, having examined several witnesses thereon, certified that the said lands in the defendant's occupation in the *Forest of Asbdown*, for four years ending *Michaelmas* 1697, contained in the whole about one thousand five hundred acres; that about sixty acres lie in the parish of *Buxton*; and the residue in *Withiam*.

The commissioners
certify, that 60 acres lie
in *Buxton*, and
1440 acres in
Withiam.

The deputy remembrancer made his report, dated the fifteenth instant, and upon reading the said order and report without exceptions, and no counsel appearing for the defendant,

IT IS ORDERED on the twentieth of *February* 1700, that the said report be ratified and confirmed, and that the said defendant do forthwith pay nineteen pounds, thirteen shillings, and sixpence, so reported due, with costs to be taxed.

Certificate and
report confirmed.

EDW. WARD.
LITTLETON POWIS.
HEN. HATSELL.

HASSEL against BEWLEY.

Cumberland, 8th July 1699.

TRIN. TERM,
11. JUL. 3. 1

THE plaintiff, as lessee under the *Dean and Chapter of Carlisle*, demands the tithes of corn and hay in *Great Braithwaite* and *Little Braithwaite*, in the county of *Cumberland*.

The farm called
Townhead, and
the farm called
Fellcroft, in the
township of
Braithwaite, in
Cumberland, pay,
in lieu of tithes,
the first a *modus*
of 3s. 8d. a-year,
and the second
a *modus* of two
bushels of oats;
and one bushel
of bigg, the
bushel to contain
nineteen gallons,
yearly.

THE COURT, upon reading the depositions, and also an award made in the year 1619 by *John Lowther* and *John Dudley, Esqrs.* touching the tithes of the said townships, and also by the proofs taken in the cause, were satisfied, that there had been constantly paid to the farmers of the said tithes several *moduses*, in lieu of the tithe corn of two tenements in the defendant's possession, lying within the said townships, the one called *Townhead Tenement*, and the other called *Fellcroft*, viz. three shillings and eightpence a year for the first tenement, and for the last tenement two bushels or measures containing nineteen gallons of oats, and one bushel or measure of the like quantity of bigg.

IT IS ORDERED AND DECREED, that the defendant shall account with and pay to the plaintiff the said *moduses*, in lieu of the tithes of corn of the said two tenements, for the time demanded by the bill.

HILARY TERM
11. WIL. 3.

SPICER *against* Pocock and Others.

Berkshire, 19th February 1699.

The plaintiff, as vicar of *Cheveley*, and rector of *Oare Curridge*, in *Berkshire*, claims the tithes of corn and hay on new grubbed ground in the said parish of *Cheveley*.

THE plaintiff, as vicar of the parish church of *Cheveley Lock-hampstead* and *Winterborn*, and rector of *Oare Curridge* and *Snelmore*, in the county of *Berks*, stated, that he was lawfully inducted into the said vicarages and rectories, and ought to enjoy all small and privy tithes, and also the tithes of corn and hay yearly arising on new grubbed ground within the said parish of *Cheveley*, and the titheable places thereof; that the defendants, the *Pococks*, in the years 1697 and 1698, occupied arable, meadow, and pasture land in the said parish, and had hay, oats, and pease, and took and carried away the same without setting out the tithes, and refused to pay the same.

The defendant *Mary Pocock* says, that she is rector of *Cheveley*, and holds a close called *Pitfalls*, which is part of the glebe, and that the said rectory is tithe free, as having been parcel of the possession of the monastery of *Abingdon*.

The defendant *Mary Pocock* admitted the plaintiff to be vicar as in the bill is stated, but said, that she was lawfully entitled to the rectory or parsonage impropriate of *Cheveley*, and the several parcels of glebe thereto belonging, and also to the tithes of corn belonging to the said rectory. She confessed, that she held the close called *Pitfalls* in the years 1697 and 1698, and mowed and fed the same, but that the said close being part of the glebe, no tithes were due or payable for the same. She denied, that the plaintiff, by any ancient custom, endowment, composition, or other means whatsoever was entitled to, or ought to have tithes of corn, grain, or hay, or other tithes whatsoever of or from the glebe, or other lands of the said rectory, or any thing in lieu thereof, or that the same had been paid to the plaintiff or his predecessors; and insisted, that the said impropriate rectory was heretofore parcel of the possessions of the late dissolved monastery of *Abingdon*, and that at the time of the dissolution, and long before, was in the hands of the abbot, and discharged of the payment of all tithes whatsoever, and so continued in the hands of *King Henry the Eighth*, his successors, or patentees, under whom she claims; and she averred that it had continued so freed and discharged from tithes, and so ought to be. She confessed, that the close called *Brooms* was sown with oats and pease, and that she took the tithes thereof as belonging to her said impropriate rectory of *Cheveley*, and that the tithes belonged to her and not to the plaintiff. She said that she knew not whether the said close was new grubbed ground or not; but that it formerly had a house in the centre of it, and had been an orchard; and that she plowed and sowed the same with oats and pease, and took the tithes as aforesaid; and she insisted, that she ought to hold and enjoy the messuage and lands belonging to the rectory impropriate of *Cheveley*, discharged from the payment of any tithes whatsoever, great or small, to the vicar, and that all the tithes of corn within the tithing of *Cheveley*, properly so called (distinct from all other tithes within the said

That she also holds a close called *Brooms*, as belonging to her said impropriate rectory of *Cheveley*.

said parish of *Cheveley*), of common right belong to the rector, and ought to be paid to her as rector thereof.

SPICER
against
POCOCK
AND OTHERS.

The defendant *James Pocock* admits the plaintiff's right to the tithes claimed.

The defendant *J. Pocock* admitted the plaintiff to be vicar, as in the bill stated, and believed him to be such rector, and that as such he ought to enjoy the tithes and profits as his predecessors had done; that he believed such vicar and rector ought to receive privy tithes, and all the tithes of corn and hay on new grubbed ground within the said parish of *Cheveley*; that he in 1697 occupied, possessed, plowed, and sowed the close called *Brooms*, about forty luggs of which were new broke ground, and the tithes belonged to the vicar; but that the other defendant *Mary* affirmed, that it belonged to her, as rector impropriate, and that he was prevailed upon by her to pay to her for the tithes thereof, one shilling.

The plaintiff replied to the defendant *Mary's* answer; and she rejoined; and witnesses were examined on both sides; and on reading the several depositions taken in the cause, and also the depositions in a former cause, wherein *Silvester*, clerk, the plaintiff's predecessor, was plaintiff, and *Rebecca Pocock*, impropriatrix of *Cheveley*, the defendant; also an endowment out of the register book of the bishop of *Sarum*, dated the fourteenth of *July* 1314;

The Court read the proceedings of a cause of *Silvester v. Pocock*, and the endowment;

THE COURT was of opinion, that the plaintiff had no right to any tithes of corn and grain in the said impropriate rectory of *Cheveley*, of which the defendant *Mary* is impropriatrix.

and decree, that the plaintiff has no right to the tithes of the corn of *Pitfalls*:

IT IS ORDERED, that the said bill, as to his demand of the tithes of the close called *Pitfalls*, be absolutely dismissed, and that the bill, as to his demand of the tithes of the close called *Brooms*, be dismissed without prejudice, but with costs for both, to be taxed.

but as to *Brooms Close*, the bill is dismissed without prejudice.

EDW. WARD.
LITTLETON POWIS.
HEN. HATSELL.

HUNT against CODRINGTON and Others.

TRIN. TERM,
7. WIL. 3.

Somersetshire, 26th June 1700.

THE bill stated, that the plaintiff, as lessee under the *Dean and Chapter of Wells*, had for several years rented the rectory or parsonage of *Congresbury*, in the county of *Somerset*, and was entitled to all tithes, and particularly to the tithes of *teazels*, sown or planted within the said rectory; that, time out of mind, the tithes of *teazels* had been paid to the owners or farmers of the said parsonage, but that the defendant *Codrington*,

Teazels, having been first planted in gardens, are a small tithe.

HUNT
against
CODRINGTON
AND OTHERS.

son, being vicar of the said parish, pretends some right to the tithes thereof, and has forbid the parishioners to pay the said plaintiff the tithes, and has received and taken the tithes thereof; that the other defendants had in the years 1696 and 1697, a great quantity of *teazels*, but they pretend that the same are small tithes, and so belong to the vicar, and not to the impropriator.

Three of the defendants answered, and admitted the plaintiff to be farmer of the rectory, and entitled to all tithes belonging thereto, but denied his right to the tithes of *teazels*.

The defendant *Codrington* said, that he had for several years claimed the tithes of *teazels*, as vicar of the said parish, for that they are small tithes, and that the vicarage is endowed with all small tithes.

The defendants *Boucher* and *Wollin* said, they had *teazels* in the said years, and they set forth the quantities and values, and insisted that the tithes belonged to the defendant *Codrington*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the proofs in the cause; and also a copy of an endowment of the vicarage, whereby it appeared that the said vicarage is endowed with all small tithes, and that the vicar has been paid all small tithes;

THE COURT took time to consider of the matter, and having so done they this day declared, that the tithes of *teazels* belong to the defendant *Codrington*, as vicar of the vicarage, they being first planted in the parish in gardens (a).

IT IS THEREUPON ORDERED by the Court, that the said bill be dismissed, with costs to be taxed, but that the said defendants are not to prosecute the plaintiff for the same until this Court make further order therein.

EDW. WARD.
LITTLETON POWIS.
HEN. HATSELL.

(a) Teazel is a plant used by clothiers: it appeared in the evidence, that it had been first planted in the parish of *Congresbury* about fifty years before the filing of the bill, and that it had been planted in other parishes immemorially; that the tithe of it, during the said fifty years, had been uninterruptedly paid to the im-

propriator; and that four successive vicars had quietly acquiesced in such payments; but as the vicar was endowed with all the *small tithes* of this parish, and the plant being, in the opinion of the Court, clearly a small tithe, the bill was dismissed. S. C. Rayn. 94 See also *Twiss v. Brazen-Nose College*, Hard. 328.

GLASSE *against* GLASSE.*Wiltshire, 3d June 1700.*TRIN. TERM,
12. WIL. 3.

THE bill stated, that, from *December 1696*, the plaintiff had been rector and incumbent of *Winterbourne Bassett*, in the county of *Wilts*, and entitled to all great and small tithes and to all customary payments in lieu thereof.

The rector of *Winterbourne Bassett*, in *Wiltshire*, claims tithes in kind.

The defendant insisted upon the *modus*es following: threepence a cow, payable in lieu of tithe milk; sixpence a calf, in lieu of tithe calves fallen within the said parish; and set forth an account of several other titheable matters he had. He confessed, he also held several acres of arable, meadow, and pasture ground, lying in *Stannmere*, whereupon he had growing divers quantities of corn and grass, the particular values of which he set forth; but insisted, that none of his meadow or pasture grounds in *Stannmere* were ever reputed to be within the rectory or parish aforesaid; neither did any former rector or incumbent ever receive any tithes, *modus*es, or other satisfaction in lieu of tithes, for any of his lands lying in *Stannmere*, for that they were formerly parcel of the possessions of the free chapel of *Beckhampton*, in the parish of *Archberry*, which were formerly in the crown, and by grants and conveyances are vested in the defendant, and therefore there was not any tithes due for the said lands to the plaintiff, although he had lately taken some of the tithes of the said lands, for which the defendant had brought his action against him, in order to try his title thereto.

The defendant pleads *modus*es as to the tithes of milk and calves, and says, that his lands called *Stannmere* are not within *Winterbourne Bassett*; but that if they are they are *tithe free*, as having been parcel of the free chapel of *Beckhampton*.

An issue was directed to try, “Whether any and what part of the defendant’s lands, lying in *Stannmere*, are liable to pay any and what tithes to the rector of the rectory and parish-church of *Winterbourne Bassett*?” the defendant to admit that *Stannmere* is within the rectory and parish of *Winterbourne Bassett*.

An issue directed to try, whether the tithes of *Stannmere* are payable to the rector of *Winterbourne*.

And as for all other lands, not in *Stannmere*, which are held by the defendant, and lie within the said parish and rectory, IT IS DECREED BY THE COURT, that the defendant shall account with and satisfy the plaintiff the values of the tithes therefrom arising, and the *modus*es set forth in the answer to be payable in lieu of tithe milk and calves, and the values of the small tithes of the things titheable which the said defendant had within the said parish during the time in the bill charged.

The *modus*es as to milk and calves allowed.

The issue was tried and found for the plaintiff, *viz.* that all the defendant’s land, lying in *Stannmere* (except as to twenty acres called *the Glebe*), were liable and ought to pay all tithes thereout arising, to the rector of the rectory and parish-church of *Winterbourne Bassett*.

A verdict for the plaintiff except as to twenty acres of glebe land.

On

GLASSE
against
GLASSE.

On the nineteenth of *November* instant the defendant moved for a new trial, but MR. BARON HATSELL acquainting the Court, that the judge who tried the same was not dissatisfied with the verdict, the motion was refused.

Tithes of *Stannmere* decreed accordingly.

IT IS ORDERED BY THE COURT, that the said defendant shall account with and satisfy the said plaintiff the values of all the tithes arising out of his estate in *Stannmere*, except for the tithes of the twenty acres of *glebe land*.

EDW. WARD.
HEN. HATSELL.
R. TRACY.

TRIN. TERM,
12. WIL. 3.

LEIGH and Another against STREATFIELD.

Kent, 28th July 1700.

No part of the lands called *Highfield*, near *Brastead*, are within the parish of *Eaton Bridge*, in the county of *Kent*.

THE plaintiffs, as farmers of the rectory of *Eaton Bridge*, in the county of *Kent*, stated, that the defendant was occupier of a piece of land called *Highfield*, which had been divided into two parts, eight acres whereof lie in *Eaton Bridge*, and have been usually rated to the church and poor of that parish, the tithes of which ought to have been paid to the plaintiffs.

The defendant said, that the said land, called *Highfield*, lies in the parish of *Brastead*, and not in the parish of *Eaton Bridge*.

An issue was directed to try, whether *Highfield*, or any and what part thereof, lieth in *Eaton Bridge*, or not? and on the trial a verdict was given for the defendant.

THE COURT therefore ordered the bill to be dismissed.

TRIN. TERM,
12. WIL. 3.

STAUGHTON and Others against HIDE and Another.

Berkshire, 27th June 1700.

A custom that after grass is put into cocks, the owner is not to rake together the grass round the said cocks, is void.

THE bill stated, that the plaintiffs *Staughton* and *Morris* were proprietors, trustees, and farmers of the rectory or parsonage impropriate of *Sbinfield*, in the county of *Berks*, and entitled to the tithes of corn, grain, hay, withies, osiers, and the other tithes and dues belonging to the said rectory, in trust for the plaintiff *Mary Jones*.

The defendants said, that after the grass is put into cocks, it is the custom of the said parish, that the parishioners are not to rake together the grass round the said cocks.

THE COURT declared, that the custom, insisted upon by the defendants not to rake up their grass into cocks in order to setting

setting out the full tithes thereof, is a void custom, and that the defendant ought to account for the tithes of the said hay, and also for the tithes and duties demanded by the bill.

STAUGHTON
AND OTHERS
against
HIDE AND
ANOTHER.

MORSE *against* FITZJAMES and Others.

TRIN. TERM,
12. WIL. 3.

Wiltshire, 8th June 1700.

THE vicar of *Presbutt*, in the county of *Wilts*, claimed, by virtue of some ancient endowment, all tithes, both great and small, yearly arising within the tithing or hamlet of *Clatford*, being within and parcel of the said parish.

The vicar of *Presbutt*, in *Wiltshire*, claims the tithes of the hamlet of *Clatford*.

The defendants said, that no tithes of corn, &c. arising in *Clatford*, or *Clatford Park*, within the tithing of *Clatford*, ought to be paid *in kind*, for that all the *demesne lands* of the manor of *Clatford* were freed and discharged from the payment of all tithes in kind, or any thing in lieu thereof other than the *modus* paid by the owners or tenants, viz. "one acre of wheat at "harvest, to be elected and chosen by the vicar of *Presbutt*, for "the time being, or his lessee, growing upon some part of the "demesne lands then sowed with wheat, and twenty shillings on "Easter Day yearly." The answer further stated, that the plaintiff, for the years for which he seeks relief, had let all his tithes (except the twenty shillings) to one *F. Holmes*, and that he had taken the said acre of wheat in each of the said years, and that the other tithes were paid in kind for the *tenantry land*; and they set forth their tithes, and what they had paid to the lessee, and what tithes they admitted to be due to the plaintiff, they averred that they had tendered him.

The defendants, as to the *demesne lands*, paid a *modus* of an acre of wheat, and 20s. on *Easter Day* yearly.

Upon reading the proofs for the defendants for proving the *modus* insisted on by the answer, to be payable in lieu of the tithes for the said *demesne lands*, and an ancient deed made in 1249, being a composition made by the prior of *Clatford*, and the rector of *Presbutt*; also a writing, intitled, "An Exemplar of a Composition, entered in a Register Book of the Bishop of *Sarum*, in 1487;" also the depositions for the plaintiff, and an order made the twenty-third of *February* 1698;

On reading the evidence.

IT IS DECREED, that the said defendants shall severally account with the plaintiff for the tithes of all such titheable matters and things as have increased, arisen, or happened upon the said *tenantry lands* and *tenantry commons*, inclosed or not inclosed, not being comprehended under the said *modus*, which they respectively occupied, used, or enjoyed, during the time in the bill charged, in *Clatford* aforesaid; and that they shall severally satisfy and pay to the said plaintiff what shall appear due to him from them respectively upon the account.

The Court decrees tithes to be paid for the *tenantry lands* not included in the *modus*.

And

MORSE
against
FITZJAMES
AND OTHERS.

And as to the tender insisted on by the defendant, the same is to be reported specially.

TRIN. TERM,
12. WIL. 3.

THORNGATE and Another against WALLOP,
Widow.

Southampton, 26th June 1700.

The lessee of
Hursburne and
St. Mary Burne,
in *Hampshire*,
claims tithes of
hay, and corn,
and wood, in

THE plaintiffs, farmers of the parsonage of *Hursburne* and *Saint Mary Burne*, in the county of *Hants*, appropriated to the hospital of *Saint Cross*, claimed all tithes both great and small, in kind.

kind. S. C. Rayn. 93.

The defendant
pleads a *modus*
on hay and corn;

The defendant confessed, that she took the hay away without paying any tithes, no tithes having ever been paid in kind for her meadow ground; that in satisfaction of all tithes of hay belonging to her the grass growing on four acres of meadow, lying in *Hacey Mead* and *Stoke Mead*, within the said parish, hath, time out of mind, been always received and taken by the bishop of *Winchester*, his farmers, or agents, as a customary payment, in lieu of all tithes grown on the said meadows; and that no tithes in kind had ever been demanded until within eighteen months past, the plaintiffs pretended to the same;

and as to wood
an exemption
from tithes.

The defendant also confessed, that she had carried away the underwood by her felled and cut, without setting out the tithes; for that the underwoods in her possession were formerly part or parcel of the lands belonging to the priory of *Hursburne*, and being so vested in the church, the same is exempted from the payment of tithes.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides.

On reading the
evidence,

On reading the proofs taken, and the minister's accounts from the thirty-third to the thirty-fourth year of *Henry the Eighth*; and a grant of the manor of *Hursburne* from *Philip* and *Mary*, in the sixth year of their reign, upon the attainder of *Sir John Gate* to *Sir Robert Oxenbridge*, whereby it appeared, that the manor of *Hursburne Priors* was parcel of the abbey of *Saint Swithin* in *Winchester*, which was one of the greater monasteries, and dissolved by the statute of 31. *Hen. 8.* and it appearing by all the proofs taken in the cause, that no tithe of *hay* or *wood* had been ever paid in the memory of man, and the plaintiffs declining to try it at law,

the bill dismiss-
ed.

THE COURT were of opinion, that the plaintiffs ought to have no relief in this cause, for the said tithes of hay and wood demanded

manded by the bill; and therefore ordered, that the bill be dismissed with moderate costs.

EDW. WARD.
LITTLETON POWIS.
HEN. HATSELL.

THORNGATE.
AND ANOTHER
against
WALLOP.

ELSTONE *against* SOWDEN and Others.

Devonshire, 26th June 1700.

TRIN. TERM,
12. WIL. 3.

THE plaintiff demanded tithes in kind of all wood felled in a wood, called *West Stoney Field Wood*, lying within the parish of *Chawley*, in the county of *Devon*, and sold within ten years last past.

A *modus* of 1d. a-year is payable to the rector of *Chawley*, in *Devonshire*, in the said county.

lieu of the tithes of all wood cut in the lands called *West Stoney Field Wood*, in

The defendants admitted, that the defendant *Sowden*, just before the filing of the bill, purchased a tenement called *West Stoney Field*, whereof the said wood is part, containing about seventeen acres, which wood not having been cut for thirty years past, there were several timber trees, and most of the coppice-wood fit to be used as such, and that the said *Sowden* sold the said wood and underwood (except thirty trees on every acre) to the other defendants the *Reeds*, who have since sold one third part of it to the defendant *Heywood*; and they insisted, that no tithe was payable for any tenement within the said parish, and particularly for the wood cut on the said tenement, other than a *modus*, which hath been time out of mind paid, viz. that the occupier of the said tenement, called *West Stoney Field*, pay or ought to pay yearly one penny to the rector of the said parish, in lieu of tithes of all wood, underwood, and coppice-wood grown, cut, and felled upon the said tenement and wood.

An issue was directed to try, by a special jury, “Whether the occupier or possessor of *West Stoney Field Tenement* have, time out of mind, paid or ought to pay one penny yearly, in lieu of tithes of all wood grown, cut, and felled upon the said tenement, or not?” on which trial the jury found a verdict for the defendants.

THE COURT therefore ordered, the said bill to be dismissed with costs, both at law and in equity, to be taxed.

EDW. WARD.
HEN. HATSELL.
R. TRACY.
THO. BURY.

BULWER *against* NEWMAN and Others.

Norfolk, 1st July 1700.

TRIN. TERM.
12. WIL. 3.

THE bill stated, that the plaintiff, for twenty years past, had been seised in fee of the rectory impropriate of *Gristwick*, in the county of *Norfolk*, and entitled to the tithes of kind of lands called the *Great Furr Closes*, the *Callas Closes*, the *Milkers Meadow*, and the corn,

The vicar of *Gristwick*, in *Norfolk*, claims the tithes in *Greengate Lands*.

BULWER
against
NEWMAN
AND OTHERS.

corn, hay, and other predial tithes; that the defendant *Bircham*, for three years past, had occupied ground called *the Great Furr Closes*; that the defendant *Bullen* also had occupied ground called *Callas Closes*, and also a meadow called *Milker's Meadow*; that the defendant *Athill* also had occupied ground called *Greengate Lands*, and that they severally sowed the same with corn, wheat, rye, &c. and reaped it, and cut the grass thereof, and made the same into hay, the tithe of all which belonged to the plaintiff, as impropriator.

The defendants insist on a *modus* for each of the said lands, excepting a piece called *the Four Acres*, parcels of *Greengate Lands*, when sowed with corn.

The defendants insisted on several *moduses* payable to the vicar in lieu of all tithes of corn, hay, herbage, and all other tithes arising from the laid lands, excepting only the close called *the Four Acres*, parcel of *Greengate Lands*, when sowed with corn; viz. the defendant *Bircham*, for *the Great Furr Closes*, four shillings; the defendant *Bullen*, for the *Callas Closes*, thirteen shillings and fourpence, and for *Milker's Meadow*, fourpence; and the defendant *Athill*, for the *Greengate Lands*, twelve shillings and fourpence.

Issues directed, and verdicts for the defendants.

On reading the proofs in this cause, and the depositions in a cause of *Bulwer v. Athell (a)*, whereby it appeared that *J. Ring* and *W. Steward*, two of the defendant's witnesses, contradicted what they had sworn in the former cause, and on great debate, the Court directed issues to try the said *moduses*; and on the trials verdicts were found with the defendants.

The bill dismissed without prejudice.

THE COURT therefore ordered the bill to stand dismissed without prejudice, with costs to be taxed for the defendants, both at law and in equity.

EDW. WARD.
R. TRACY.
THO. BURY.

(a) Trinity Term, 1698.

TREWIN against BOND.

HILARY TERM
12. WIL. 3.

Devonshire, 20th February 1700.

A custom to set out the tithe of corn in sticks of twelve sheaves, or stiches of ten sheaves, and to pay no tithes for the odd number of sheaves under ten, is void.

THE plaintiff claimed the tithes of corn and other grain as lessee of the rectory of *Woodbury (a)*, in the county of *Devon*, from and under the custos and college of vicars of the choir of the cathedral church of *Saint Peter*, in *Exeter*.

The defendants insisted on an immemorial custom to set up their corn and grain there grown and reaped, in sticks, being twelve sheaves placed in a row, six sheaves against six sheaves; or in stiches, being ten sheaves placed in a row, five sheaves

(a) See the case of *Heathfield v Trosse*, post. 11. Dec. 1769, Mich. Term, 10. Geo. 3.

against

against five sheaves; and that if there happen, upon the whole quantity of corn, to be any stick or sticks, stich or stiches, not amounting to the number of ten, no tithe is paid of such under the number of ten.

TREWIN
against
Bond.

THE COURT declared, that the said pretended custom is a void custom; and therefore ordered, that the defendants shall pay to the plaintiff the tithes of all the wheat, barley, and other corn; particularly for the tenth part of all the odd sticks or stiches of wheat, barley, or other corn, not amounting to the number of ten, which they respectively had in every field or inclosure within the said parish.

GRAHAM, Esq. *against* DAWES and Others,

MICH. TERM,
13. WIL. 3.

Westmoreland, 18th July 1701.

THE rector of *Crosby Ravenside*, otherwise *Ravensthorpe*, otherwise *Crosby Ravenswith*, in the county of *Westmoreland*, stated, that the defendant *Dawes* was owner, and the other defendants were occupiers of a farm called *Regill*; a close called *Bayliffe Field*; and a tenement called *Addisons*, and that they had depastured a number of sheep thereon, and had lambs and wool, and also corn and grain from the same; and prayed an account of corn, wool, and lamb.

A *modus* of 3s. 1d. a-year is payable for *Regill Grange*, and 6d. a-year for *Addison's Tenement*, to the impropriator of *Ravensthorpe*, in *Westmoreland*, in lieu of the tithes of corn, grain, wool, and lamb.

The defendant *Dawes* confessed, that he was seised in fee of *Regill* and of *Addisons*, and that the other defendants were farmers and possessors thereof; but he insisted that no tithe in kind of corn, grain, wool, or lamb, ought to be paid for the grange called *Addisons*, or for *Bayliffe Field*, but a *modus* of three shillings and sevenpence yearly at the feast of *Saint Lawrence*; viz. three shillings and one penny for *Regill Grange*, and sixpence for *Addison's Tenement*, and *Bayliffe Field*, to the impropriator; and that there is yearly payable to the vicar twelve shillings for tithe hay and other tithes.

Issues were directed to try, FIRST, "Whether there be a *modus* of three shillings and one penny payable by the owners and occupiers in lieu of all tithes of corn, grain, wool, and lamb for *Regill Grange* to the impropriator of *Crosby Ravensworth*, &c.;" SECONDLY, "Whether there be another *modus* of sixpence payable to the impropriator in lieu of all tithes for *Addison's Tenement*, and *Bayliffe Field*, belonging to the defendant *Dawes*;" and in both of the said issues verdicts were found for the defendants.

THE COURT ordered (the plaintiff not appearing by counsel) that the bill be dismissed with costs of suit to be taxed by the deputy remembrancer.

EDW. WARD.
CONYERS

TRIN. TERM,
13. WIL. 3.

CONYERS *against* SWEETLAND and LEATR.

Devonshire, 30th June 1701.

The inhabitants of *East Budleigh*, in *Devonshire*, pay 4d. a hog-head for cyder; 4d. an acre for hay; 4d. for every calf; 1d. a-year for gardens; 1d. a-year for fire wood, and 4d. a-year for *Easter* offerings.

THE vicar of *East Budleigh*, in the county of *Devon*, with the chapel of *Withercomb Rawleigh* annexed, claimed the customary rates in lieu of the tithes of cyder, hay, calves, garden stuff, fire wood, herbage, and *Easter* offerings.

The defendants said, that the plaintiff was an alien, born in *France*, and not made a *denizen*, and submitted to the Court, whether they should pay him tithes, or whether he had any right until he was made free by act of parliament?

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon debate of the matter, and reading the depositions, it appeared, by the plaintiff's proofs, that the *modus* or customary payment for cyder was fourpence a hoghead, and not threepence only, as was set forth in the defendant's answer; for grafs mowed and made into hay, fourpence an acre; for every calf, fourpence; for his garden, one penny a-year; for fire wood, a *hearth penny* yearly; and for *Easter* offerings, as confessed by the answer, fourpence for man and wife.

And THE COURT decreed the same to be paid by the defendants accordingly.

HILARY TERM
13. WIL. 3.

COE *against* SMITH.

Suffolk, 19th February 1701.

The rector of *Elmsfett*, in *Suffolk*, claims tithes of herbage, and of wood converted

THE rector of *Elmsfett*, in the county of *Suffolk*, claimed the tithe of log trees, and the loppings and toppings of other trees in kind, and for the agistment of barren and unprofitable cattle.

The defendant says, he neither inhabits or occupies land in *Elmsfett*, but that he bought some wood there, and made it into charcoal, and also sent bullocks to pasture there.

The defendant admitted that the plaintiff was rector, and entitled to all tithes belonging to the said rectory, and stated, that he was an inhabitant of the parish of *Hadleigh*; that he neither inhabited or occupied or owned any lands or tenements whatsoever in the parish of *Elmsfett*; but he confessed that he had bought logg trees and loppings and toppings for four pounds ten shillings, and had felled and converted them into *charcoal*, the tithe of which, if titheable, were worth twenty shillings. He also confessed, that in one year he had put ten bullocks to pasture for five weeks with an owner or occupier of lands in the parish of *Elmsfett*, and averred that the said owner or occupier had paid the tithes of his lands in the said parish.

The tithes of the charcoal and the herbage decreed.

THE COURT was of opinion, that tithes in kind are due for wood converted into charcoal, and also for the tithe herbage the

the value of which tithes the parties, by consent, admitted to amount to six pounds, twelve shillings, and sixpence.

CON
against
SMITH.

It was accordingly decreed, that the defendant do satisfy and pay to the plaintiff the said sum for the value of the said tithes, together with costs of suit, to be taxed by the deputy remembrancer of the court.

WARD, *Chief Baron.*
HATSELL, *Baron.*
TRACY, *Baron.*
BURY, *Baron.*

CODDEN *against* BRIDGER.

TRIN. TERM,
13. WIL. 3

Sussex, 14th July 1701.

THE rector of *Lurgasball*, in the county of *Sussex*, claimed tithes in kind of the lands called *River Park*, the property of *Lord Montagu*, and in the occupation of the defendant.

The lands called *the River Park*, in the parish of *Lurgasball*, in the county of *Sussex*, pay a *modus* of 5l. a-year to the rector, in lieu of tithes in kind.

The defendants insisted upon a *modus* of five pounds a-year for the park lands.

An issue was directed to try, whether the *modus* of five pounds *per annum* be an ancient *modus*, payable in lieu of tithes in kind for the *River Park Lands*, or not. But the plaintiff declining to try the issue,

IT IS ORDERED, that the bill be dismissed, as to the demand of the tithes for *River Park Lands* in kind, with costs, and that the arrears of the said *modus*, being an ancient *modus*, in lieu of tithes in kind for *River Park Lands*, shall be paid to the plaintiff by such of the defendants as are occupiers of the said lands.

EDW. WARD.
HEN. HATSELL.
R. TRACY.
THO. BURY.

CROCKAT *against* HARRINGTON.

TRIN. TERM,
13. WIL. 3.

Essex, 8th July 1701.

THE vicar of *Horindon on the Hill*, in the county of *Essex*, claimed vicarial tithes in kind from certain lands called *Dukes Land*, in the said parish.

The vicar of *Horindon on the Hill*, in *Essex*, claims the tithes of *Dukes Farm*.

The defendant confessed that he held a farm called *Bargeffe*, otherwise *Dukes Land*, in the parishes of *Horindon on the Hill* and *Orsett*; but said that he did not know, nor could it be dis-

The defendant says, the said farm was parcel of a farm called of tithes.

Malgrove, for which there is a *modus* of 13s. 4d. a-year, in lieu of tithes.

CROOKAT
against
HARRINGTON.

tinguished, what part lies in the one parish and what in the other; that the said farm, from time immemorial, until the year 1660, had been part of a manor called *Malgraves*, and that no small tithes ought to be paid to the plaintiff for *Bargeffe Lands*, for that the owners of the said manor had immemorially paid to the vicar thirteen shillings and fourpence a-year as a *modus* for the small tithes of *Malgraves Farm*, and therefore the said *Bargeffe Lands*, being formerly part of *Malgraves*, were discharged, by the said *modus*, from the payment of small tithes.

The tithes of
Dukes Farm de-
creed.

THE COURT, on reading several old deeds produced by the defendant, was of opinion, that small tithes ought to be paid for that part of the farm called *Bargeffe Lands*, which lies within the parish of *Horindon*; and decreed an account for the same accordingly.

HEN. HATSELL.
R. TRACY.
THO. BURY.

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
DURING
THE REIGN OF QUEEN ANNE.

WERNDLEY *against* SEYMOUR and Another.

Buckinghamshire, 6th May 1702.

EASTER TERM
1. Q. ANNE.

THE plaintiff, as vicar of *Wyrardsbury*, with the chapel of *Langley* annexed, in the county of *Buckingham*, stated, that the vicarage, ever since the year 1258, had been a vicarage endowed; that the vicar was entitled to the whole *alterage* of the said church and chapel, and particularly, by endowment, to the tithe of hay arising within *Langley*; that he was, in the year 1689, inducted into the said vicarage, and entitled to all the rights and profits to the same belonging; that the dean and canons of *Windsor* were the impropriators of the said parish; that they had demised to the defendant *Seymour* so much of the *great tithes*, belonging to the said parsonage, as did arise within the chapelry of *Langley*; that *Seymour* had let the same to the defendant *Ball*, who had prevented the plaintiff from taking the said tithe of hay in *Langley*.

The vicar of *Wyrardsbury*, with the chapel of *Langley*, in the county of *Buckingham*, annexed, is not entitled to the tithe of hay within the parish of *Langley*, but the same belongs to the dean and canons of *Windsor*.

The defendants stated, that the dean and chapter of the king's free chapel of *Saint George*, within the castle of *Windsor*, being owners of the parsonage of *Langley*, and entitled to the great tithes, and to the tithe of hay, had, by their indenture under their common seal, dated the ninth of *January* 1697,

D d 2

demised

WERNDLEY
against
SEYMOUR
AND ANOTHER.

demised the same to the defendant *Seymour*, for twenty-one years, who had let an under-lease thereof to the defendant *Ball*, by virtue whereof he claimed the tithe of hay. They denied that the plaintiff, or any former vicar, had ever received the tithe of hay arising in *Langley*, and averred that the same had been constantly received by the dean and canons of *Windsor*, impropiators of the parsonage of *Langley*, or by their lessee, and not by the vicar. They also insisted, that by the endowment of the said vicarage the plaintiff had not any right to the tithe hay of *Langley*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the depositions, and an ancient parchment, purporting to be a valuation of the said vicarage in the year 1258; and also the said lease, made in the year 1697,

THE COURT ordered the bill to be dismissed with costs.

TRIN. TERM,
1. Q. ANNE.

BURRELL against GREENACRES.

Norfolk, 15th June 1702.

Timber trees
above 20 years
growth, logs
made into bil-
lets and faggots
and burnt in the
house, and un-
derwood and
thorns used for
repairing the
fences, pay no
tithes.

THE plaintiff, as rector of *Wollerton*, in the county of *Norfolk*, stated, that, by common right, the tithe of wood ought to be paid in kind; and that the defendant had occupied several acres of wood land, and had cut down and converted several loads of wood to his own use; the tithes whereof were worth forty shillings a-year.

The defendant denied that the plaintiff was entitled, either by common right or immemorial custom, to the tithe of wood, for that the wood and trees, which he had cut down within the said parish, were in their nature grosse boys, or timber, except such as grew in the hedge-rows, and which he had applied with the thorns for repairing the hedge rows, and for the better improvement of the tithes and herbage of the inclosures in the said parish; that the trees were all above twenty years growth; that the underwood and thorns, growing in the said hedge-rows, had, for the greater part, been used in repairing the fences, and the remainder made into faggots and billets, and burnt in his house; that in the said parish there is a custom immemorial, that if the farmers or occupiers of the lands cut any underwood or thorns growing upon ditches and inclosures, and employ the same in mending or new fencing within their houses, or on their farms in the said parish, no tithes shall be paid for the same, but that the tithes of the hay, corn, and grass so improved shall be taken in full satisfaction of the underwood and thorns growing upon such ditches.

The

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides.

BURBET
against
GREENACRES.

THE COURT ordered the bill to be dismissed.

DENT, D. D. *against* BUCK, Bart. and Others.

TRIN. TERM,
L. Q. ANNE.

Lincolnshire, 6th July 1702.

THE vicar of *Lenton*, otherwise *Lavington*, in the county of *Lincoln*, claimed all vicarial tithes in kind, particularly in *Hanbeck*, otherwise called *Hanby Grange*, and the lands and titheable places thereof, in *Lavington* ; that the defendant *Buck*, and the other defendants did, in the years 1697, 1698, and 1699, and still do occupy and enjoy lands in *Hanby Grange*, and pretend that there is a *modus* of twenty pounds payable to the vicar of *Lavington* by the defendant *Buck* in lieu of his tithes ; that in the year 1689 he exhibited his bill against the said *Buck* for the tithes of *Hanby Grange*, who then insisted, by his answer, on the said *modus* of twenty pounds a-year, and pretended that he had found a record, in the time of *Queen Elizabeth*, in a suit of *Fuller*, then tenant of part of the said grange, against *Dale*, then vicar of *Lavington*, wherein *Dale* impleaded *Fuller* in the arches court for the tithes of wool and lamb, and the feeding of barren cattle in the said grange ; that *Fuller* thereupon applied to the king's bench, and set forth the said *modus* of twenty pounds, and proved the same ; that the said *Buck* also pretended that he has a copy of the exemplification of the record thereof ; that the plaintiff applied to *Buck* to produce the same, which he did, and proposed to allow the said plaintiff eleven pounds a-year for his life, if he would give the receipt for twenty pounds ; and that they entered into articles accordingly, dated the fourth of *December* 1690 ; but that afterwards he was advised that the church was not to be bound by the said articles of agreement, and therefore he brought his bill to be relieved against the said agreement, and to recover the tithes in kind, and to have the said agreement cancelled. The bill also stated, that in the parish of *Lavington* there is a lordship called the *Manor of Lenton*, distinct from the lordship of *Hanby Grange*, in which there is a piece of pasture ground called *Grange Lees*, which the defendant *Buck* held in the years 1689 and 1692, and thereon depastured several sorts of cattle, but of which he refused to pay any tithes, on a pretence, that the same is part of *Hanby Grange*, whereas the same is in the manor of *Lenton*, and is held thereof, and has always paid tithes to the vicar of *Lavington*, and is taxed to *Lavington*, distinct from the said grange ; and that the defendants *Garland*, *Lacy*, and *Rastall* occupied the said *Grange Lees*, and had depastured the same with sheep and cows without paying any tithes for the same.

The vicar of *Lavington*, in *Lincolnshire*, claims the tithes of *Hanby Grange* in kind.

S. C. 2. Eq.
Abr. 489.

S. C. 4 Viner
Abr. 535 ;

and states, that the defendant, deceitfully pretending to him that there was a *modus* of 20l. a-year in lieu of the tithes of the said grange,

induced him to sign an agreement to take 11l. a-year for his life in lieu thereof.

He also claims the tithe of *Grange Lees*, in the manor of *Lavington*, and no part of *Hanby Grange*.

DENT, D. D.
against
BUCK, Bart.
AND OTHERS.

The defendant
relies upon the
agreement made
by the plaintiff
to take 21l. a-
year for his life
in lieu of tithes,
and denies all
fraud.

and insists that
Grange Lees is
part of *Hanby*
Grange.

The defendant *Buck* admitted the plaintiff to be vicar of *Lavington*, and entitled to the glebes and profits of the said vicarage; but denied that he was entitled to receive the small tithes in kind arising out of the lordship of *Hanby Grange*, or the titheable places thereof, in *Lavington*; and he set up the said *modus* of twenty pounds a-year, which he averred had been paid by him and his ancestors, time out of mind, to the vicars, either in specie, or by permitting them to hold some part of the grange; and that by the statute 2. & 3. *Edw. 6. c. 13.* no person shall be compelled to pay tithes for any manor, lands, and tenements, which by any privilege or prescription are not chargeable with the payment of tithes, or discharged by any composition real; and that by the said payment of twenty pounds the owners and tenants are discharged. He also stated, that the plaintiff drew up and signed the agreement in the bill mentioned, but he denied that he had ever desired, or that the plaintiff had thereby agreed to give acquittances for the twenty pounds *modus*; and said, that the plaintiff had given divers receipts, and therefore ought not to impeach the said agreement, the same being made at his request; upon which agreement the defendant doth insist; and that *Grange Lees* is part of the manor of *Hanby Demesnes*, and no parcel of the manor of *Lenton*.

The other defendants said they were occupiers of several parcels of land, and insist on the said *modus*.

The bill, as to
the tithes of
Hanby Grange,
dismissed with-
out prejudice.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard the twenty-first of *February* last; when it was ordered that the bill should be dismissed, as to the tithes of *Hanby Grange*, without prejudice.

An issue direct-
ed as to *Grange*
Lees.

And an issue was directed to try, whether *Grange Lees* be part of *Hanby Grange*, or not?

A rehearing
granted.

On the ninth of *July* 1701 the plaintiff moved for a rehearing, which was granted, and the cause came on to be heard on the sixth of *December* following; when

The Court of
opinion, that the
plaintiff is not
relievable against
his own agree-
ment.

THE COURT declared, that as to the tithes of *Hanby Grange*, the plaintiff was not relievable against his own agreement; and they did abide by the judgment given upon their former hearing, and saw no cause to depart from the same; and the plaintiff then present in court, refusing to go to trial according to the former directions, and wholly waving the same,

The bill dis-
missed.

IT WAS ORDERED AND ADJUDGED, that the bill should be absolutely dismissed with costs, without prejudice to the plaintiff's demand of eleven pounds a-year, payable to him by the defendant *Buck* according to their agreement,

After

Afterwards the plaintiff appealed to *the House of Lords*, which came on the nineteenth of *March* last; when

DENT, D. D.
against
BUCK, Bart.
AND OTHERS.

IT WAS ORDERED AND ADJUDGED, that the said decree, and the affirmation thereof, should be, and they were thereby *reversed*, and that the agreement should be set aside.

The plaintiff
appeals to the
house of lords,
and the decree
is reversed.

The plaintiff afterwards, on the twenty-fourth of the said *March*, petitioned the lords in parliament, complaining that the minutes taken before their lordships were, "that the said decree, and the affirmation thereof, should be *reversed*, and "the agreement set aside;" but that it was therein omitted, "that the court of exchequer should proceed to relieve "the plaintiff."

But the order
being informal,

Upon reading the petition, it was ordered that the plaintiff and the defendant *Buck* should be heard by counsel each, and notice be given to the defendant; and counsel being heard upon the said petition on the twenty-seventh of the said *March*,

the plaintiff, as
petitioned,

It was ordered by the lords spiritual and temporal in parliament assembled, that the following words should be added to the judgment of the house pursuant to the order of the nineteenth instant; *viz.* "that the court of exchequer do proceed "to hear and determine the cause, as to the right of the tithes "in question, notwithstanding the agreement."

and the lords
order the court
of exchequer to
hear and deter-
mine the cause.

The cause came on to be reheard this day in pursuance of the orders of the house of lords of the nineteenth and twenty-seventh of *March* last 1701; and on reading the said orders, and the proofs taken in the cause, and the several receipts of the vicars of *Lavington*, a trial at law, by a special jury, was directed upon this issue, "Whether there be a *modus* of twenty pounds "payable to the vicar of *Lavington*, in lieu of the tithes of *Hanby Grange*, and the lands thereto belonging, or not?" and "Whether *Grange Lees* be part of *Hanby Grange*?" the equity of the said cause to be reserved to the court till the said trial shall be had.

An issue directed
to try the vali-
dity of the a-
greement. and
whether *Grange
Lees* is part of
Hanby Grange.

The trial was accordingly had by a special jury, and a verdict found for the plaintiff; but upon reading the order and the verdict, whereby it appeared that the *modus* of twenty pounds a-year was invalid, and of no effect, and on mature deliberate debate of the matter,

Verdict in fa-
vour of the vi-
car.

THE COURT declared their opinions *seriatim*, and ordered and decreed, that the defendants shall account for their tithes *in kind* for *Hanby Grange* and the lands thereunto belonging for the years aforesaid; and that tithes in kind for the future shall be paid to the vicar of *Lavington*, for the time being, for *Hanby Grange* and the lands thereunto belonging; and it is referred to the

Tithes in kind
Hanby Grange.

DENT, D. D. deputy remembrancer to take and report the said account; the
against
 BUCK, Barr. costs to be reserved.
 AND OTHERS.

In pursuance of the said order, the deputy made his report the eighteenth of *May* last; and upon reading the said order and report, without exceptions, and hearing counsel on both sides, and on full debate, it is ordered, on the twelfth of *July* 1704, that the said report be confirmed, and that the said defendants shall pay to the plaintiff the several sums of money so reported due from them respectively for their several tithes in kind for *Hanby Grange* aforesaid, and the lands thereunto belonging, together with moderate costs to be taxed.

EDW. WARD.
 THO. BURY.
 RO. PRICE.
 J. SMITH.

MICH. TERM,
 1 Q. ANNÆ.

MALLABAR *against* YOUNG and Others.

Cambridgeshire, 9th December 1702.

The lessee of the rectory of *Wilberton*, in the *Isle of Ely*, claims the tithes of *Leizure Fen* and *Doles Fen*.

THE bill stated, that the archdeacons of *Ely*, having been seised of the impropriation or rectory of *Wilberton*, in the *Isle of Ely*, in the county of *Cambridge*, in right of the archdeaconry, or as a corps annexed thereto, have used to let the same for three lives, or twenty-one years; that *W. Saywell*, D. D. and archdeacon of *Ely*, being seised of the said rectory, did, in his lifetime, by indenture, dated the twenty-sixth of *March* 1700, made between him and the plaintiff, demise to the plaintiff, his heirs and assigns, all the said rectory, with all houses, lands, rents, woods, liberties, and tithes thereto belonging, to have and to hold the same to him and his heirs for three lives, paying yearly to the said *Wm. Saywell* and his successors thirty-four pounds, at two payments, and also paying yearly to such as should serve the cure there fifty pounds; that there are within the said rectory two fens, called *Leizure Fen* and *Doles Fen*, which, for two years past, have been possessed and enjoyed by the defendants; and that the said *Fens* are very rich, and bear great crops, and have been used in tillage, mowing, and feeding of cattle.

The defendants say, that two parcels of land, called *Pale Piece* and *Butts Way*, were formerly given to the owner of the rectory in lieu of the tithes of *Doles Fen*.

The defendants admitted, that within *Wilberton* there are two fens, called *Leizure Fen* and *Doles Fen*; and that in the said years they severally held certain pieces of fen ground in *Doles Fen*, and also certain pieces of fen ground in *Leizure Fen*; that they mowed the grass of the lands in *Doles Fen*, and made the same into hay, and ploughed part of the land in *Leizure Fen*, and sowed the same with cole seed and oats, and fed the other part with cows and horses; that they have not paid any tithes in kind,

OF

or made any composition with the plaintiff for the lands in *Doles Fen*, for that certain parcels of lands now or late in the plaintiff's occupation, called *Pale Piece* and *Butts Way*, about nine acres, lying near to the parsonage-house, and other lands in *Doles Fen*, which were, upon the draining thereof by an act of parliament in the fifteenth year of *Charles the Second*, entitled "An Act for draining *Bedford Levell*," taken in by the adventures from the owners of the rectory of *Wilberton*, were formerly, beyond the memory of man, exchanged by some former owners thereof with such persons as were then owners of the said rectory to each other's satisfaction, in lieu of all tithes for ever after, on account of the said *Doles Fen*; that *Leisure Fen* was formerly part of the waste ground belonging to some former lord or owner of the manor of *Wilberton*, and was, time immemorial till the late division thereof by the said act, used in the following manner, viz. from *Candlemas* to *Lammas* yearly it was laid to be mown by way of moveable lots, being sometimes more and sometimes less (except the lords of the said manor's lot, which was always in a place certain), and afterwards converted into hay or fodder for wintering the owners cattle of the said several lots; and from *Lammas* to *Candlemas* it was fed with the cattle of such as had right thereto, who were the lord, or owner, and his or their tenants, which privilege anciently began, as is conceived, by the grant of some such former lord or owner of the said manor, for their under tenants' better support in the management of the lands by them held; that, by the like grant, the owners and farmers of the impropriation or rectory had a considerable moveable lot or lots in *Leisure Fen* in lieu of all tithes, both great and small, for ever after yearly arising from all persons on account of the said *Fen*, for which reason the said *Fen* has been taken to be freed from the payment of all tithes whatever to the said rectory; and that when the said *Fen* was divided by the said act, the rector had a considerable lot to hold to him and his successors in lieu of all tithes, and the same has been so held in severalty by the rector and his successors, and is at present so held by the plaintiff; that the several lots of other persons have been held tithe free, and that no part thereof, before the said division, ever paid any tithes, except some small matter that might probably be paid in kind by some persons who were influenced thereto by the plaintiff, or some others, the predecessors of the plaintiff in the said rectory.

MALLABAR,
against
YOUNG
AND OTHERS.

and that a certain moveable lot or portion of *Leisure Fen* was also assigned, by the lord of the manor of *Wilberton*, to the rector of the said parish, in lieu of the tithes of the said *Fen*.

An issue was directed to try, "Whether the lands in the defendant's answer mentioned, or any and which of them have been held and enjoyed, and ought to be held and enjoyed by the owners, rectors, and impropriators of the rectory of *Wilberton*, in the *Isle of Ely*, in the county of *Cambridge*, for the time being, and their lessees or farmers, in lieu and satisfaction of all tithes, both great and small, arising, happening, and

An issue directed to try, whether the lands were so assigned in lieu of tithes.

MALLABAR,
against
YOUNG
AND OTHERS.

Verdict for the
defendants.

The bill dismissed
with costs.

“ and being upon the two fens called *Doles Fen* and *Leizure Fen*,
“ within the said rectory of *Wilberton*, or not ?” to be tried by
a *Cambridgeshire* special jury, but no inhabitants in the *Isle of*
Ely, nor any owner, occupier, or tenant of any lands within the
titheable places thereof, to be on the jury; the judge to indorse
on the *postea* any thing special. The issue was accordingly
tried, and a verdict thereupon given for the defendants.

THE COURT therefore ordered the defendants to be dis-
missed from the said bill, and their costs to be taxed by the
deputy remembrancer of this court.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

MICH. TERM,
S. Q. ANNE.

PIDSLEY against CAREW.

Devonshire, 30th November 1702.

The inhabitants
of the parish of
Rickle, in the
county of *Devon*,
file their bill to
establish and
confirm several
*modus*es for the
payment of the
rectorial tithes of
Cows and milk,

Calves,

Heifers,

Garden stuff,

Wood and furze

Ancient mea-
dow hay,

New meadow
hay,

Cyder,

THE plaintiffs, inhabitants and owners of several lands, te-
nements, and estates lying within the rectory and parish of
Rickle, in the county of *Devon*, as well for themselves on their
own behalf, as on behalf of all others the inhabitants,
owners, and occupiers of lands and estates within the said rec-
tory and the titheable places thereof, filed their bill against the
rector of the said rectory and parish church of *Rickle* and the
lessee of the tithes under the said rector, to establish and con-
firm the several immemorial customs following: FIRST, to pay
one shilling yearly, in lieu of the tithe of the milk of every milch
cow depastured, and the calf of such milch cow calved or fallen,
and for the whole product of such cow yearly.—SECONDLY, six-
pence for every milch heifer depastured, for all the milk yearly
of such heifer, and for her calf, and for the whole product of
such heifer in the year wherein she had her first calf.—THIRDLY,
one penny, called a *garden penny*, in lieu of all tithes, herbs, and
garden stuff, and other garden fruits arising yearly within such
garden.—FOURTHLY, one penny, in lieu of the tithes of all
wood and furze cut and felled on the said lands and tenements,
coppice woods or underwoods.—FIFTHLY, fourpence an acre
for every acre of *ancient meadow*, when the grass of such ancient
meadow has been mowed and made into hay, in lieu of the
tithes of the hay thereof.—SIXTHLY, sixpence an acre, when
the grass grown on such lands hath been cut, mowed, and
made into hay, for and in lieu of the tithes of every acre of
such their several lands (not ancient meadow) so cut and made
into hay.—SEVENTHLY, fourpence a hoghead for every hog-
head of cyder which has been made of apples yearly, when
such apples have been converted into cyder, for and in lieu of
all

all such apples so converted into cyder.—EIGHTHLY, one penny yearly, for and in lieu of the tithes of all apples not converted into cyder. In case there be no cyder made of any apples grown on such orchards and lands, then the owners, occupiers, and possessors of such lands have been accustomed to pay one penny only, in lieu of the tithes of all such apples.

PIDGLEY
against
CAREW.
Apples.

The defendant *Carew* denied the *modus*, and confessed, that by deed, dated the twelfth of *March* 1700, and duly executed, he did grant the said rectory, glebe lands, and tithes to the defendant *Oliver* for five years.

The rector denies the validity of the *modus*.

An issue was directed to try the customs or *modus* in the bill set forth; and it was found that there were such customs or *modus* as above set forth.

An issue directed, and a verdict in support of the customs.

The Court accordingly ORDERED, ADJUDGED, AND DECREED, that the said customs and *modus* shall be, and hereby are established, ratified, and confirmed.

The *modus* confirmed and established.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

HOLWELL against WOOLSTON.

Devonshire, 30th November 1702.

MICH. TERM,
1. Q. ANNE.

THE rector of *Torbryan*, in the county of *Devon*, claimed tithes in kind.

The rector of *Torbryan*, in *Devonshire*, claims tithes in kind.

The defendants insisted on the following customary payments: viz. for every inhabitant, above sixteen years of age, twopence, for *Easter* offerings; for wood and furze burnt and used within the said parish, one penny yearly, called an *hearth penny*; for the tithe of gardens, one penny, called a *garden penny*; for all calves sold, two shillings out of every twenty shillings; for every other calf kept for store, one halfpenny; for every milch cow, fourpence; for a new milch cow, calving after *Midsummer*, twopence; for every ten ewes milked, twopence halfpenny, and so proportionably for a greater or lesser number; for every hoghead of cyder, twopence, in lieu not only of apples, but of pears and all orchard fruit; and they insisted on a custom to tithe lambs on *Saint Mark's Day*, and, on refusal, to put the tithe lambs under a yew tree in the church-yard; but they denied that any thing is due for the agistment of horses and oxen.

The defendant insists on *modus* in lieu of the tithes of *Easter* offerings, firewood, garden stuff, calves, milch cows, ewes, cyder, lambs, and fruit.

THE COURT, on reading the depositions of the witnesses on both sides, ordered the defendants to pay to the plaintiff for

The Court decrees the *modus* as to garden in kind.

stuff, milch cows, and fire wood; and that all other tithes shall be paid the

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the several years demanded by the bill, for the tithe of gardens, one penny yearly, called a *garden penny*, in lieu of all herbs and roots there growing; for every milch cow, fourpence yearly; and for every milked ewe, one farthing; and one penny yearly, for and in lieu of all wood and furze burnt in the said parish, called an *hearth penny*, according to the said *modus* set forth in the answer; and that the said defendants shall account for the value of the tithes of all woods and furze, not used or burnt in the said parish; for the tithe of all wheat, barley, oats, beans, peas, and other grain demanded by the bill; for the value of tithe hay, and the tithes of the wool of lambs, hops, calves, pasturage of sheep, barren cattle, colts, oxen, horses, or other cattle agisted and not used for the plough or pail; and for apples, pears, fruit, turkeys, ducks, cocks, hens, eggs, honey, wax, and all other titheable matters and things not comprehended under the several *modus* aforesaid.

MICH. TERM,
2. Q. ANNE.

GREY against JENKINS and Others.

Durham, 11th December 1702.

The rector of the parish of *Bishop's Wearmouth*, in the county of *Durham*, is entitled to one entire sum of 14l. 13s. 4d. a-year from the owners and occupiers of the lordship of *Barnes*, within the said parish, exclusive of the yearly value of the closes called *the Parson's Closes*, which are part of the glebe, in lieu of the tithes of the said lordship of *Barnes*; but he is not entitled to the tithes of corn of the village of *Rivehop*.

THE bill stated, that for forty years past the plaintiff had been rector of the parish of *Bishop's Wearmouth*, in the county of *Durham*, by virtue whereof he became, and is legally entitled to several closes called *the Parson's Closes*, parcel of the glebe land belonging to the said rectory, and to all manner of tithes, prescriptions, and ancient payments for tithes, happening within the said parish; that within the parish there is a certain manor, lordship, village, hamlet, or place commonly called *Barnes*, consisting of a capital messuage, &c. of four hundred pounds a-year, whereof one *Bowes* was seised in fee when the plaintiff was inducted, who pretended that he was seised of all tithes of corn and grain within the town or village of *Rivehop*, and insisted that he and his tenants were exempt from the payment of all tithes in kind for *Barnes* upon paying an ancient *modus* of fourteen pounds, thirteen shillings, and fourpence yearly at *Michaelmas*; that the said *Bowes*, so long as he continued owner of the said closes, paid the same yearly; and that the plaintiff believing the said sum to be an ancient *modus*, never demanded tithes in kind for the said estates; that the same sum was also paid by *William Haddock* so long as he continued owner thereof; that *Haddock* and his wife sold part of the corn tithe of *Rivehop* to *W. Ettick*, and the other part to *A. Read* and others, but the said *Haddock*, after the sale, constantly paid the fourteen pounds, thirteen shillings, and fourpence for *Barnes* only, and afterwards sold part of *Barnes*, being two hundred pounds *per annum*, to *J. Jenkins*, and the other part to the said *Ettick*, and that an allowance was made to them out of the purchase money for the said fourteen pounds, thirteen shillings,

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shillings, and fourpence, and that they during their lives constantly paid the said *modus* to the plaintiff; that upon *Jenkins's* death his part descended to the defendant *Jenkins*, who with the said *Ettick* continued the payment thereof; that afterwards the said *Ettick* died, leaving his part to the defendant *Ettick*, who entered; that the said *modus* became due at *Michaelmas* 1700; and that the rector is well entitled to the said corn tithe of *Rivehop*; and that if the said annual sum be not a *modus*, then the plaintiff is well entitled to tithes in kind; that the defendants, the tenants for a year ending at *Michaelmas* 1700, ought to have set out their tithes; that the defendants *Jenkins* and *Ettick* alledged that the ancient prescription due to the plaintiff was seventeen pounds, thirteen shillings, and fourpence; and that the portion thereof for *Barnes* ought to be only six pounds, thirteen shillings, and fourpence, and no more; and that the owners of the corn tithe of *Rivehop* ought to pay yearly eleven pounds, part thereof; that the other defendants, who claimed to be owners of *Rivehop* corn tithe, pretended, that they ought not to pay any money in lieu thereof, either as part of the fourteen pounds, thirteen shillings, and fourpence, or otherwise; but that the plaintiff enjoyed the said *Parson's Closes*, for and in lieu of the said corn tithe; that the said *Parson's Closes* are, and have been time out of mind, part of the ancient glebe lands of the said rectory; and on two trials at law in 1657 and 1658, between the then rector and some of the owners of *Barnes* or *Rivehop*, the only matter in issue being, whether the said *Parson's Closes* were part of the ancient glebe of the rectory, or held in lieu of any tithes or money payable in lieu of tithes, two several verdicts were given for the then rector. The bill therefore prayed, that the said defendants may be compelled to pay the arrears now and in future of the said annual sum, or otherwise their tithes in kind, and to make a full discovery.

The defendant *Ettick* by his answer, as owner of a moiety, denied the *modus* of fourteen pounds, thirteen shillings, and fourpence, and insisted, that six pounds, thirteen shillings, and fourpence, and no more, was the true *modus*, payable at *Michaelmas* yearly to the rector, in lieu of all manner of tithes whatever for *Barnes*; and he set forth several acquittances given by the several rectors or their agents betwixt 1560 and 1646, thereby to make it appear that seventeen pounds, thirteen shillings, and fourpence, was the ancient and entire prescriptive rent or *modus* both for the manor of *Barnes* and the corn tithe of *Rivehop*, which were during that time enjoyed together by *Bowes*, the owner thereof, and that six pounds, thirteen shillings, and fourpence thereof was by the said acquittances distinguished to be for *Barnes*, and eleven pounds for *Rivehop*; and that the said rectors were permitted by the owner of *Barnes* to enjoy the said *Parson's Close* at three pounds *per annum* rent, in part of satis-

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satisfaction of the said entire *modus* ; that the said yearly payment of fourteen pounds, thirteen shillings, and fourpence was afterwards paid only to complete the said entire *modus* of seventeen pounds, thirteen shillings, and fourpence, the rent of the said *Parson's Close* being thereout deducted. The answer also stated a judgment obtained upon a prohibition in 1633 or 1634, for establishing the *modus* of eleven pounds *per annum* for *Rivebop* corn tithe, and several acquittances taken notice of in the breviat of that cause to be found in the evidence room at *Ash*, formerly the estate of the said *Bowes*; that *William Bowes* the son died an infant about 1662, and that the wrong payment during his infancy cannot destroy the validity of the said *modus*, or the infant's title to *the Parson's Closes*, or his right in the corn tithe of *Rivebop* ; that *Haddock*, who became entitled to the said estate in right of his wife, as heir to the said *W. Bowes* the infant, sold a moiety of *Barnes* to the defendant *Jenkins* in 1673, and sold the other moiety, together with part of the corn tithe of *Rivebop*, to the defendant *Ettick's* father, who conveyed to the said defendant that moiety of *Barnes*, with *the Parson's Closes*, subject to the payment of a moiety of the *modus* of six pounds, thirteen shillings, and fourpence ; and that he is entitled to the said *Parson's Closes*, as parcel of the said manor of *Barnes* ; that in 1692 he searched the deeds of the purchase of the said manor, and found among them all the letters, briefs, pleadings, and ancient acquittances before set forth, and a rental for 1646 of the said manor and corn tithes, wherein *Parson's Closes* are inserted as part thereof. He admitted, that the plaintiff never received tithes in kind of *W. Bowes* or his tenants ; and believed, that *W. Haddock* continued the payment of fourteen pounds, thirteen shillings, and fourpence at *Michaelmas* yearly, and permitted the plaintiff to keep *Parson's Closes*. He said also, that he believed his father did pay a moiety of the said fourteen pounds, thirteen shillings, and fourpence, till *Michaelmas* 1700 ; that he had tendered his part of the six pounds, thirteen shillings, and fourpence, and is ready to pay the same ; and that he had refused to permit the plaintiff to take tithes in kind, or to pay him the said fourteen pounds, thirteen shillings, and fourpence ; but that he claimed no right to the corn tithes of *Rivebop*.

The defendant *Jenkins*, as the owner of the other moiety of the manor of *Barnes*, together with the other defendants, as tenants or occupiers under him, also insisted upon the said six pounds, thirteen shillings, and fourpence, being the ancient and true *modus* for *Barnes*, and eleven pounds for *Rivebop* ; and that in lieu of part of the said *modus* the said rector enjoyed the said *Parson's Closes* ; and he said, that he believed that *Haddock's* son continued the payment of fourteen pounds, thirteen shillings, and fourpence, and that, being illiterate, he had permitted the plaintiff to hold *the Parson's Closes*.

The

The other defendants put in their answers as tenants, and disclaimed all title, but were willing to act as the Court should direct.

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AND OTHERS.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon reading the proofs taken in the cause, and the several acquittances as set forth in the answer and proofs, and other acquittances produced by the defendants, and on long debate of the matter,

IT IS ORDERED AND DECREED BY THE COURT, that the said plaintiff is legally entitled to the said several closes called *Parson's Closes*, as parcel of the glebe lands belonging to the rectory of *Bishops Wearmouth* ; and that the said place called *Barnes*, with the appurtenances, is separately and of itself chargeable with the payment of the ancient *modus* or prescript rent of fourteen pounds, thirteen shillings, and fourpence, yearly, to the rector of *Bishops Wearmouth*, and his successors rectors of the said church, at or upon the feast of *Saint Michael the Archangel*, for and in lieu of all manner of tithes whatsoever, coming, growing, arising, renewing, or increasing out of or within all and every the messuages, lands, and tenements, lying and being within the said manor, lordship, village, hamlet, or place, called *Barnes* aforesaid ; and that the said defendants *Jenkins* and *Ettick*, and the other defendants, the tenants and occupiers of the several messuages, lands, and tenements within the said manor of *Barnes*, shall and do immediately upon request made to them, or any of them, pay to the said plaintiff, or his assigns, fourteen pounds, thirteen shillings, and fourpence, for the said ancient *modus* or prescriptive rent due to him at the feast of *Saint Michael the Archangel* 1700, the same being in arrear at the time of filing the bill ; without costs ; and that the owners and proprietors of *Barnes* aforesaid, and their tenants and lessees, shall for ever hereafter yearly pay the same to the said plaintiff and his successors.

And as to the said other defendants, the tenants and occupiers of the corn tithes of *Rivehop*, and the lands and tenements within the said township,

IT IS FURTHER ORDERED and adjudged by the Court, that the said bill shall and do stand dismissed, but without any costs to be paid by the plaintiff to the said defendants, or any of them.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

TWITTIE

HILARY TERM
2. Q. ANNE.

TWITTIE *against* EWIN and Others.

Wiltshire, 11th February 1702.

The inhabitants of the parish of *Draycott Folliatt*, in the county of *Wilt*, pay a *modus* of 2d. a cow in lieu of tithe milk.

THE rector of *Draycott Folliatt*, in *Wiltshire*, claimed all tithes in kind, both great and small, arising in the said parish.

The defendant *Ewin* insisted on a *modus* of twopence a cow in lieu of tithe milk; and that a verdict at law had been obtained on that point against the plaintiff, in the twenty-third year of *Charles the Second*: The other defendants said, they were occupiers of farms in the said parish; and they set forth their tithes, and the values of the same, and made a tender to the amount; and also insisted on the said *modus* of twopence a cow in lieu of tithe milk.

THE COURT, on reading the record of a verdict obtained against the plaintiff, then defendant, in a prohibition out of the court of king's bench, on a trial at law, in the twenty-third year of *Charles the Second*, on this single point, "Whether a *modus* of twopence a cow, in lieu of tithe milk in kind, was payable in the said parish of *Draycott*?" ORDERED AND DECREED, that as the *modus* had been found by the said verdict at law, the said bill, as to tithe milk, shall stand dismissed.

EASTER TERM,
2. Q. ANNE.

EKINS *against* BRIDGES and Others.

Northamptonshire, 26th April 1703.

The rector of *Barton Seagrave*, in *Northamptonshire*, claims tithe of hay and herbage, milk and lambs.

Lambs to be set out 17th May.

That an agreement made to take 2s. in the pound, in lieu of tithe hay and herbage, is invalid.

THE bill stated, that the plaintiff, being rector of the parish-church of *Barton Seagrave*, in the county of *Northampton*, ought to have the great and small tithes arising therein; that the defendants held several lands in *Barton* aforesaid from *January 1698*; some part of which they had sowed with grain; and had depastured the other part with cows and sheep, and received great benefit by agisting barren cattle; that they had a number of colts, calves, lambs, fleeces of wool, and milk; and did mow other ground, and had carried away the hay; of all which tithes ought to have been paid to the plaintiff; that the tithe of lamb ought to be marked and set out the seventeenth of *May* yearly, and run with their dams till the first of *August*, the rector paying twopence a lamb to the parishioner; all which the defendants had refused to pay, pretending some agreement of two shillings in the pound for the tithes of hay, wool, and lamb, and other dues, which they have paid to the twenty-fifth of *March 1699*, and insisted to continue the same, not having had due notice; that the said articles were not to be obligatory till a commission, therein mentioned, had been executed, at the joint charge of the plaintiff and the defendant *Bridges*, for the perpetuating the testimony of witnesses; and

and that the defendants refused to join in the same, and therefore the articles are of no force ; that the defendants had three months notice of the plaintiff's intentions to take his tithes in kind before the twenty-fifth of *March* 1699 ; yet, for quietness sake, he was willing to begin to take the same from 1700 ; and that the defendants ought to pay two shillings in the pound for the year 1699 ; that the defendants ought to pay the tithe of wool in kind for all sheep shorn in the parish of *Barton*, though the same be brought into the parish after *New Year's Day* and before *shearing day* ; and two shillings in the pound for the agistment of barren and unprofitable cattle ; that the tithe of milk arising within the said parish ought to be brought to the dwelling-house of the rector, or to a place called *the Cross*, in the said parish, which was not done for the year 1700, for which the plaintiff demands satisfaction. The bill therefore prayed a discovery of the defendant's tithes for the said years, and a full satisfaction for the same.

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Milk, how to be paid.

The defendant *Bridges* admitted the plaintiff to be lawful rector of the parish, and intitled to the great and small tithes, and he insisted on the articles made between him and the plaintiff, whereby it was agreed, that the plaintiff should take, during their joint lives, two shillings in the pound after the pound rent thereof, in lieu of all tithes of any lands of the defendant which he or his tenants should hold or occupy therein during all such time as such land shall be cut for hay, grazed, or depastured, the tithe whereof, when ploughed or sown, to be paid in kind ; and therefore he hoped that he and his tenants ought not to pay tithe in kind for his grazing grounds.

The defendant
Bridges insists on
the agreement.

The other defendants, as his tenants, insisted upon the benefit of the said articles as to such lands as they rented of the defendant *Bridges* ; and all the defendants who were occupiers of lands within the said parish insisted upon the parol agreement made between the plaintiff and them ; and that the same ought to continue till *Michaelmas* 1700, for that they had not timely notice of the plaintiff's intention to take his tithes in kind : and they set forth the grounds they held in the said parish, and the titheable matters arising therefrom since *Michaelmas* 1700 : and they all said, that they did not know of any particular place where tithe milk ought to be set out and paid ; but have heard, that it is not due all the year, but begins to be payable the ninth night and tenth morning after *Easter*, and continues payable until the first lamb shall be yeaned after *New Year's Day* ; and that the same ought to be paid where it is milked ; that the tithe of wool is to be paid in kind for all such sheep as are brought into *Barton* parish before *New Year's Day*, and there shorn, and a halfpenny a sheep for all brought into the parish after *New Year's Day*, and before *shearing day* ; that tithes of lambs are to be set out about the middle of *May*, to be kept on the grounds and to run with the dam till the first

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first of *August* following, the incumbent to pay twopence a lamb to the occupier of the ground ; that two shillings in the pound are due to the rector of the said parish for the agistment of the cattle of strangers which are agisted within the said parish ; but that the two shillings ought not to be paid for the herbage of barren cattle, which are the proper stock of the landlord or tenant, but the sum of twopence halfpenny for every beast.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon long debate of the matter, and hearing what counsel could alledge, and reading the said articles made between the plaintiff and the defendant *Bridges* and his tenants, dated the twenty-fifth of *April* 1689, and the depositions of divers witnesses taken on both sides,

The agreement
established.

THE COURT declared, they saw no cause to set aside the articles made between the plaintiff and the defendant *Bridges* in the bill and answers mentioned.

And as to the several customs and usages of paying tithes within the said parish,

Tithes of lambs
and milk decreed
according to the
custom.

THE COURT declared they were satisfied, FIRST, That the tithe of lambs ought to be set out in every year on the *seventeenth of May*, and that the lamb ought to run with the dam on the ground where the same is yeaned until the *first of August* following, the incumbent to pay twopence to the occupier of such ground, at the delivery of such lamb on the first of *August*.—SECONDLY, That tithe milk ought to be paid in kind every ninth night and tenth morning after *Easter Monday* until the first lamb is yeaned alive in the said parish after *New Year's Day* ; and that such tithe milk ought to be brought to *the Cross*, near the court yard gate of the defendant *Bridges*, in the said parish.—THIRDLY, That the tithe of herbage ought to be paid for barren cattle, which are the proper stock of the occupiers of land within the said parish, as well as those of strangers.—FOURTHLY, That tithe wool in kind of all sheep shorn in the said parish ought to be paid to the plaintiff.—FIFTHLY, That the pretended custom of twopence halfpenny a beast for the tithe of barren cattle, being the proper stock of the occupier, and the pretended custom for the payment of a halfpenny a sheep for the tithe wool of such sheep as are brought into the parish after *New Year's Day*, and insisted upon by the defendants, ought to be rejected.

Herbage.

Sheep.

Barren cattle.

IT IS THEREUPON ORDERED AND DECREED by the Court, that the defendants do account with the plaintiff for the lands they respectively held within the said parish from *Lady Day* 1699 to the filing of the bill, pursuant to the said articles in the answer mentioned ; and that they do pay to the plaintiff so much money as shall appear to be due to him upon such account ; and that the

the several customs for the setting out of tithe lambs on the seventeenth day of *May* every year, and that the lamb shall run with the dam on the ground where the same was yeaned till the first of *August*, the incumbent to pay twopence to the occupier of such ground for every such lamb; and the said custom of paying tithe milk in kind every ninth night and tenth morning after *Easter Monday* until the first lamb yeaned alive in the said parish after *New Year's Day*, and for bringing and delivering the milk at the place, called *the Cross*, near the defendant *Bridges's* court yard gate, in the said parish, by the parishioners, to be there taken by the rector or his servants for the time being, shall be, and are by the decree of this court ratified, established, and confirmed.

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against
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AND OTHERS.

AND IT IS FURTHER ORDERED, that the defendants *Danty*, *Hunt*, and *Palmer*, do respectively account with and pay to the plaintiff a composition after the rate of two shillings in the pound for their tithes due for 1699 and to *Michaelmas* 1700, according to the several agreements insisted upon by their answers; and they are likewise to account with and pay to the plaintiff for tithe milk, wool, and barren cattle, and all other tithes arising on the lands which they respectively held and enjoyed within the said parish from *Michaelmas* 1700 to the time of filing the bill (excepting for such lands as they held in the parish as tenants to the defendant *Bridges*, for which they are to account with the plaintiff after the rate of two shillings in the pound rent according to the said articles); and it is referred to the deputy remembrancer to take the account, and make his report herein. And, by consent (other than the defendant *Bridges*), the said defendants are to pay the plaintiff forty pounds costs in this cause.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

TONGE *against* COLE and Others.

TRIN. TERM,
2. Q. ANNE.

Durham, 29th June 1703.

THE bill stated, that the plaintiff, in 1695, was presented, &c. into the rectory of *Branspeth*, in the county of *Durham*, and entitled to all manner of tithes, dues, and duties arising therein; that the defendant *Cole* is seised of several grounds within the said parish, called *the East and West Parks*, formerly part of the possessions of *Charles*, late *Earl of Westmorland*, and which came to THE CROWN by his attainder of high treason; that the said grounds, at the time of his attainder, were *imparked* and replenished with deer and other wild animals, and

The rector of *Branspeth*, in the county of *Durham*, is entitled to a *modus* of 13l. a-year, in lieu of the tithes of the lands called the *East and West Parks*.

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against
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AND OTHERS.

so continued for several years afterwards, during which time no tithes did arise or were yielded or paid for the same ; that the said parks afterwards coming into the hands of farmers or purchasers of the crown, they paid to the plaintiff's predecessor for several years, for the tithe hay of the said parks, forty shillings a-year, being the full value of the tithe hay at that time ; that the tithes of the said parks were afterwards improved and advanced to three pounds a-year, which was then the full value thereof, and which was paid for several years ; that the said parks were purchased by *R. Cole*, grandfather of the defendant, who, by ploughing and other husbandry, improved the same ; that the tithes thereof, after two variations in 1637, came to the sum of thirteen pounds a-year ; which sum, or some such sum, was paid to the plaintiff's predecessors until 1644 by the said defendant *Cole*, as a composition and satisfaction for the tithes of the said parks ; which compositions were as much as the tithes of the said parks were worth, or near the value thereof ; that about 1644, *Dr. Cowin*, the plaintiff's predecessor, by reason of the distraction in the kingdom, was removed from the said living, and *Mr. H. Lever* possessed and enjoyed the same ; and the tillage increasing the value of the tithes, he then demanded tithes in kind, but was informed by the defendant's grandfather, that three pounds were due as a prescription, and ten pounds as a gratuity ; and he was induced, by such misrepresentation, to accept thirteen pounds a-year for some time, as a composition for the said tithes, but gave acquittances for three pounds as a prescriptive rent, and ten pounds as a gratuity ; that afterwards the said *Mr. Lever*, upon better information, insisted on and received the tithes of the said parks in kind ; that in the year 1661, *Dr. Wisbard* being rector of the said parish for one year, being deluded by the acquittances given by *Lever*, accepted from the agents of *Sir N. Cole* the said thirteen pounds ; that in the year 1662, *Dr. Brevint* being rector of the said parish, was, for some time, persuaded by the agents of the said *Sir N. Cole* to accept thirteen pounds in lieu of the tithes in kind for the parks, until 1674, when he inspected into the revenues of the said rectory ; and finding some papers which discovered the misinformation of the owners of the said parks, did insist upon and demand tithes in kind for the said parks, and brought his action at law for the recovery thereof against one *Hutchinson*, farmer of part of the said parks ; which coming to trial at *Durham assizes*, where *Sir R. Cole* was a man of great power and interest, several of the jurymen being his tenants, a verdict passed against the said *Dr. Brevint*, contrary to the evidence and the direction of the Judge ; that afterwards the said *Dr. Brevint* filed his bill in this court for the recovery of his tithes, but being very old, he died before the suit was proceeded in ; that upon his death, in 1695, the plaintiff was instituted, &c. into the said rectory, and entitled to all tithes, great and small, within the said parish, and particularly

of the *East and West Parks*; that the defendant *Cole*, and the other defendants as his tenants, for three years past, did use part of the said parks, and had corn and hay, and other tithes, growing thereon, which they carried away without setting out the tithes of the same, insisting on the said *modus* of thirteen pounds in discharge of tithes in kind; whereas tithes in kind are due for the said lands, and were several times paid and answered in kind to *Dr. Cofins* and *Mr. Lever*, and other the plaintiff's predecessors; and the sums paid by composition in lieu of tithes did several times vary, according to the values of the tithes arising thereupon. The bill therefore prayed a discovery of and satisfaction for the titheable matters which the defendants had in the said years.

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against
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The defendants said, that they had used several lands, part of the said parks, and had several titheable matters arising thereon, and set forth the quantities and values of the said tithes; but insisted, that no tithes ought to be paid in kind for the said *East and West Parks*; but that there is, and time out of mind has been, a sum or *modus* of thirteen pounds a-year paid to the rectors of the said parish, for all tithes arising on the said lands; and that the said *modus* was paid and accepted by the said *Dr. Cofins* and *Dr. Brevint*; and they stated the action, and said, that they had offered and were ready to pay the plaintiff the said *modus*; and insisted, that no tithes in kind were due for the said lands.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides.

The Court directed an issue to try, "Whether the sum of thirteen pounds *per annum* has been paid, time out of mind, by the owners and occupiers of the said *East and West Parks*, to the rector of the said parish of *Branspeth* for the time being, his tenants and farmers, in lieu, satisfaction, and discharge of all tithes arising in the said *East and West Parks*?" A trial was accordingly had by a special jury of the said county; and after long evidence given on both sides in the said cause, the said jury gave a privy verdict; and afterwards coming into court to affirm the same, the said plaintiff, being called, did not appear, but suffered a nonsuit.

The cause now, on the eighteenth of *November 1703*, coming on to be heard on the equity reserved, the plaintiff's counsel prayed a new trial; but on long debate of the matter, the Court refused the motion;

AND THEREUPON ORDERED AND DECREED, that the defendants do pay to the plaintiff the said *modus* of thirteen pounds *per annum* for the several years demanded by bill, with his costs to be taxed by the deputy remembrancer.

EDW. WARD,
THO. BURY,
RO. PRICE,
J. SMITH.

KIDLEY

TRIN. TERM,
2. Q. ANNE.

KIDLEY *against* BEACON.

Somersetshire, 25th June 1703.

The vicar of *Queen Camel*, in *Somersetshire*, claims tithes in kind.

THE vicar of the parish of *Queen Camel*, in the county of *Somerset*, claims the tithes of the said vicarage in kind.

The defendant *Beacon* insists on a *modus* of 8d. an acre for his lands called *the Parks*.

The defendant *Beacon* admitted that he held several acres of ancient meadow, parcel of certain lands called *the Parks*; but insisted, that the owners and occupiers of the said lands had, time out of mind, paid the impropriator of the rectory of the said parish eightpence an acre, and no more, in discharge of all manner of tithes issuing thereout; and that no tithe in kind, or any thing in lieu thereof (save the eightpence an acre), was ever paid for the said parks; and that neither the plaintiff, nor any other vicar of the said church, ever had, or ever demanded any tithes therefrom before the year 1699.

The defendant *Martin* insists on the same *modus*.

The defendant *Martin* said, that for the years in the said bill mentioned he had held a small cottage, and eight acres of meadow, and no more, part of the lands called *the Parks*; and insisted on the said *modus* of eightpence an acre for his cottage and meadow.

The bill dismissed.

THE COURT, upon reading the depositions taken in the cause, and on full debate, ordered the bill to be dismissed without costs; but that if the plaintiff give the defendants any further trouble, he is to pay to them their costs, to be taxed by the deputy remembrancer of this court.

EDW. WARD.
THO. BURY.

TRIN. TERM,
2. Q. ANNE.

LISTER *against* FOY.

Dorsetshire, 1st June 1703.

The vicar of *Buckland Abbas*, in *Dorsetshire*, claims tithes in kind.

See other causes, Trin. 12. Ann. and East. 23. Geo. 3.

THE bill stated, that the vicarage of *Buckland Abbas*, otherwise *Newton*, in the county of *Dorset*, being void, the plaintiff was, in the year 1690, lawfully instituted and inducted thereunto, and ought to receive all small tithes and other duties therein, and in the tithings of *Buckland*, *Knowle*, *Brockhampton*, *Dunkisb*, *Mineterne Parva*, and *Plush*, thereto belonging.

The defendant insists on several *moduses*.

The defendant *Foy* stated the custom of tithing in the said parish to be as follows: FIRST, That any inhabitant having under seven calves or lambs fallen ought to pay to the vicar one halfpenny for each calf or lamb; if seven or above, and not ten, to pay one, the vicar paying the inhabitant, if not above seven, three halfpence; if eight, then one penny; and if nine, then a halfpenny.—SECONDLY, For a calf killed, to be spent in the inhabitants

LISTER
against
FOX.

inhabitant's own house, the vicar to have the best shoulder, if the parties have not that year calves enough to make the number of seven.—THIRDLY, For every calf sold, where the party hath not enough, with the calf sold, to make up seven, the tenth penny for what it is sold is paid.—FOURTHLY, One penny for every colt foaled, paid at *Lammas Day*, whether afterwards reared or sold, and no greater sum for the pasturage of such colt.—FIFTHLY, That after tithes paid for calves as aforesaid, no further consideration is, by custom, to be given in lieu of tithes for them for any year after till such calf be reared and used for plough or pail; and nothing paid for the tithe of pasturage of any calf, heifer, or sheep, or colt intended for plough or pail; nor for any plough cattle used about managing arable land out of which the vicar or parson have tithe corn.—SIXTHLY, That the custom in *Brockhampton* and *Dunlish* tithing and *Clinger* is, for every inhabitant, betwixt *Saint Mark's Day* and *All Saints Day* yearly, to pay the tenth ordinary cheese, to be collected when stiff, or every fortnight or three weeks.—SEVENTHLY, That the custom of tithing in *Mineterne Parva* and *Plush* (except *Clinger*) is to pay twopence *per annum* for each cow, and three halfpence for each heifer, in full of tithe of cow white; and in *Henley*, threepence each milk cow, and twopence each milk heifer; and in *Huntwell* farm, fourpence a cow, and threepence a heifer; and in *Knowle* tithing the like, and twopence for every barren cow milked, in full for tithe of cow white.—EIGHTHLY, That the inhabitants ought to be free from payment of tithes of locks of wool.—NINTHLY, That calves ought to be paid for at the end of a month after their fall.—TENTHLY, That tithe apples and pears ought to be paid (except fallings)—And, ELEVENTHLY, One penny for a garden, and twopence for every communicant.

The defendant *Hopkins* also insisted on the said *modus*.

To which answers the plaintiff put in a special replication, and thereby admitted to have received several tithes and titheable matters from the defendants, arising within the said parish and the several tithings thereof for the time demanded by the bill; but said, that the defendants had several other tithes and titheable matters charged in the bill within the said parish and the titheable places thereof, for which they have not paid tithes, but ought to pay the same.

The defendants rejoined; and witnesses were examined on both sides; and upon full debate of the matter,

THE COURT declared, that the custom set forth in the defendant's answer, for every inhabitant in *Brockhampton* and *Dunlish* hamlets and *Clinger*, betwixt *Saint Mark's Day* and *All Saints Day* yearly, to pay the tenth ordinary cheese, or tenth days milk once skimmed and made into cheese, in full for cow white, the cheese to be collected when stiff, or every fortnight or three weeks, to be a void custom.

The *modus* as to the tithe of cheese declared void.

LISTER
against
FOY.

And as for the custom of tithing of lambs on *Saint Mark's Day*,

The *modus* as
to the tithe of
lambs allowed.

THE COURT doth allow the custom, that for such lambs as are able to subsist without the ewes on *Saint Mark's Day*, are to be tithed ; but that such other lambs as are not able to subsist without the ewes on *Saint Mark's Day*, are to be tithed when they are able to subsist without the ewes.

Tithes of locks
of wool not to be
accounted for.

IT IS THEREUPON ORDERED BY THE COURT, that the said defendant shall account with and pay to the plaintiff the value of their several and respective tithes due and in arrear from them to the time of the bill (except for *locks of wool*, for which they are not to account). But that they are to account for all fleece wool whatever.

AND IT IS FURTHER ORDERED, that they shall account for the tithes of such apples as fall from the trees.

EDW. WARD.
THO. BURY.
RO. PRICE,
J. SMITH.

TRIN. TERM,
2. Q. ANNE.

HORTON against HIGGINBOTTOM and Others.

Somersetshire, 22d June 1703.

The impropria-
tor of *Bedmin-
ster*, in *Somerset-
shire*, claims tithe
in kind.

S. C. Rayn. 95.
App. 104.
S. C. 1. Bro.
P. C. 140.

THE bill stated, that the plaintiff's father, for twenty years then last past, had been impropriator or owner of the tithes of corn, grain, and hay, arising within *Bedminster*, *Redcliffe*, and *Ley*, and the titheable places and precincts thereof, under a lease, granted, in trust for himself, by *F. Horton*, formerly a prebendary of *Bedminster* and *Redcliffe*, belonging to the cathedral church of *Salisbury*, to which prebend the said tithes, as well as the manor and demesne lands, of *Bedminster* belong, as a body, and had been usually leased for lives or years ; that the plaintiff then was farmer, impropriator, or owner of the said rectory, under a lease granted to *R. Coxeter*, in trust for the said *F. Horton*, and ought, by virtue of the said lease, and as executor to his father, to have had and received all manner of tithes of corn, grain, and hay, arising, &c. within the said parishes within twenty years last past, or some composition in lieu thereof ; that the tenants and occupiers of all lands and tenements there, ought to have set out the same in due manner ; that the defendants having within sixty or eighty years inclosed their common fields, and turned the same into meadow, whereby the profits of their lands are now by hay which formerly were by tillage, pretend there are *moduses*, &c.

The defendant
insists on several
moduses.

The defendants said, that it might be true that the plaintiff and his father had been owners of the said rectory of *Bedminster*, *Redcliffe*,

Redcliffe, and *Ley*, for twenty years last past, but whether the plaintiff was entitled in the lifetime of his father they knew not. They believed that the plaintiff and his father, as rectors and impropriators, ever since the death of *Sir H. Smith*, twenty years ago, had been entitled to the tithes of corn and grain within the rectory of *Bedminster*, as belonging to the prebend, for they had received the same in kind or compounded for it; but they denied that they, or any former impropriator, ever received or demanded tithe hay, until it was demanded by the present bill, or ever knew it set out or taken by any former owner of the said rectory; and that there had been several immemorial *modus*es in the said rectory, to pay yearly a small sum of money for each tenement, for all grounds mowed for hay on each respective tenement, in lieu of the said tithe hay, which they said they were ready to pay, but the same was never demanded; that they never knew or heard that any owner of lands there ever paid any tithe hay in kind, or composition for the same, otherwise than by paying the small *modus*es, and believed, that *Sir H. Smith* and his ancestors, who were former impropriators thereof, for about one hundred years, would have claimed the said tithes if they had been due, the same being of the value of one hundred pounds *per annum*, but they never pretended to any other payment than the said *modus*es of one penny and twopence an acre.

HORTON
against
HIGGINBOTTOM
AND OTHERS.

The defendant *Higginbottom* said, that for twenty years past, he had occupied several grounds within the said parish, and so enumerates them, and which tillage land was turned into pasture, and also sets forth the small *modus*es for each lands, and that he did not set out his tithes in kind of hay, for that he insisted no tithes in kind of hay was due.

All the other defendants set forth their lands and the said *modus*es, and insisted that no tithe hay was due; they denied, that they pretended to any other *modus*, or that the rector of the said rectory had any part of the *parsonage moor*, in lieu of tithe hay, or any other composition whatever, and annexed a roll of the *modus* of the parish of *Bedminster*, and insisted that the *modus* was collected thereby.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing what could be insisted on by counsel on both sides, and upon reading the lease of the said prebend and rectory of *Bedminster*, and several exhibits, and divers proofs on both sides,

IT IS ORDERED AND DECREED BY THE COURT, that all the defendants shall severally account with and satisfy the plaintiff, for the value of the tithes of hay of all the lands they severally held for such years, as they have respectively held the same, since the plaintiff's title commenced until the time of filing the bill.

The Court decrees the defendants to account for their tithes in kind.

And

HORTON
against
HIGGIN-
BOTTOM
AND OTHERS.

And forasmuch as the defendants have not made proof of the several *modus*es, by them insisted on in their answers, to the satisfaction of the Court, nevertheless in regard the plaintiff hath made little proof of the payment of tithe hay in kind ; and forasmuch as no tithe in kind was demanded, nor any suit commenced for the same for twenty years last past ;

But without prejudice.

THIS COURT doth further order and decree, that the same shall be without prejudice to the said defendants for the future, as to the said *modus*es, so insisted on by them.

The taking of the account was referred to the deputy remembrancer, who, in pursuance, made his report, dated the fifth of *August* last, which, on the sixth of *December* 1704, the Court ratified and confirmed, and ordered that the defendant *Mackrill* do forthwith pay to the plaintiff two pounds, eight shillings, and the defendant *Wiltshire* one hundred and three pounds, seven shillings, and sixpence, and the defendant *Ratcliffe* twelve pounds, nine shillings, and sixpence, so reported due for their tithe hay.

The defendant
Higginbottom dies,
and the suit re-
vived against
Harrington, his
executor,

The defendant *Higginbottom* died before the deputy remembrancer made his report against him, and the plaintiff filed his bill of revivor against the defendant *Harrington*, who appeared, and answered, and admitted assets, and on the seventeenth of *December* last, the deputy was ordered to review his report, who accordingly did so on the fourteenth of *February* last, to which the defendants put in exceptions, and upon reading the orders, report, and exceptions, and on full debate, the Court overruled the first exception, and allowed the second, and confirmed the said report as to it, and ordered that the said defendant do forthwith pay to the said plaintiff forty three pounds, so reported due to him.

who is decreed
to account.

But the defend-
ants appeal to
the house of
lords, and the
decree is reversed.

But the said suit was afterwards revived by an appeal to the lords in parliament, from the said decretal order, to which appeal the plaintiff put in his answer ; and upon hearing counsel on both sides on the said appeal, the fourth of *February* 1706, it was then ordered and adjudged by the lords, that the said decree should be so far reversed, as that several issues should be tried in the proper county at the next assizes, “ Whether the several *modus*es “ insisted upon by the defendants in their answers, who were appellants, had been, time out of mind, paid and payable for “ and in lieu of tithe hay in kind,” and that the court of exchequer should proceed upon the issues directed, as should be just, and if any difference should arise between the parties in settling the issues, it was ordered, that they should apply to Mr. BARON PRICE to settle the issues so to be tried.

And an issue directed to try the
*modus*es.

Verdict for the
defendants.

Pursuant to which order the several issues were tried, and a verdict given for the defendants, the appellants.

The

The cause now, on the ninth of *December* 1707, came on upon the said order and verdict, and upon reading the decree, the order of the house of lords, and the *postea*, and on hearing counsel on both sides ;

HORTON
against
HIGGIN-
BOTTOM
AND OTHERS.

IT IS ORDERED BY THE COURT, that the defendants shall severally account with, and that the defendants *Mackrill* and *Ratcliffe*, and the defendant *Harrington*, out of the assets of the said *Higginbottom's* estate, shall severally satisfy and pay the plaintiff the arrears of the *moduses*, set forth in the answers, for the tithe hay of the lands therein-mentioned to be comprehended under such *moduses*, for such years as they and the said *Higginbottom* severally held such lands, in the time in the bill mentioned, and shall in like manner account with and satisfy the plaintiff the value of the tithe hay of the rest of the lands not comprehended under the said *moduses*, as they and the said *Higginbottom* respectively held within the said rectory and parishes, for such years as they severally held such lands, in the time in the bill charged, and it is referred to the deputy remembrancer to take and report the said account. Costs reserved.

The defendants decreed to account for the arrears of the *moduses*.

EDW. WARD.
THO. BURY.

HEATH against SANDFORD.

Surry, 30th June 1703.

TRIN. TERM,
2. Q. ANNE.

THE bill stated, that, for several years past, the plaintiff had been rector of *Saint Mary Magdalen, Bermondsey*, in the county of *Surry*, and entitled to all tithes within the said parish, that the defendant *Sandford*, for a house situate at or near *Dockhead*, which he had occupied since *Michaelmas* 1696, ought to pay to the plaintiff quarterly five shillings, in lieu of tithes ; that the defendant *Thomas* ought to pay, for a house there, four shillings a quarter to the plaintiff.

The rector of *Bermondsey*, in *Surry*, is entitled to 5s. a year, in lieu of tithes of certain houses at *Dockhead*.

The defendants insisted that their said houses were built upon ground belonging to the late dissolved monastery and abbey of *Bermondsey*, which was one of the greater monasteries, and that the grounds belonging to the same are exempted and privileged from the payment of tithes by the laws and statutes of this kingdom, no tithes having ever been paid for the same ; and they insisted they were tithe free.

IT IS ORDERED AND DECREED BY THE COURT, that the defendants *Sandford* and *Thomas* shall forthwith respectively pay to the plaintiff the yearly sum of five shillings for the said tithes.

OSBORNE

MICH. TERM,
2. Q. ANNE.

OSBORNE *against* DUNSTALL and Others (a).

Suffex, 7th December 1703.

The plaintiff being patron of the parish-church of *Newtimber*, in the county of *Suffex*, lord and owner of *Newtimber Farm*, and proprietor of the tithes of *Sadlecomb*, states, that it was agreed, that the rector of *Newtimber*, should take the tithes of *Sadlecomb Farm*, in lieu of the tithes of *Newtimber Farm*.

THE bill stated, that the plaintiff was patron of the parish of *Newtimber*, in the county of *Suffex*, and lord of the manor, and owner of *Newtimber Farm*, and proprietor of the tithes of *Sadlecomb*, in the said parish, that the tithes of *Sadlecomb* lying more convenient to collect than the tithes of *Newtimber Farm*, it was heretofore agreed between the rector of the said parish and the owner of *Newtimber Farm*, and proprietor of the tithes of *Sadlecomb Farm*, that the rector of the said parish should take the tithes of *Sadlecomb Farm*, in lieu of the other, and that the occupiers of *Newtimber Farm* should hold the same tithe free; that the several writings concerning the same, were signed, and the exchange of the said tithes were continued by several incumbents, whereupon the owners did let the same tithe free; that the said church of *Newtimber*, being void in the year 1687, the plaintiff presented the defendant *Dunfall* to the said living, who is still incumbent, and that since his induction, he was well satisfied, that the tithes of *Sadlecomb*, did belong to the plaintiff, and continued the said exchange as his predecessors had done, until three years ago; that the owners of *Newtimber Farm* let the same tithe free; that the tithes being worth more than the other farm, the owners made the parson some small allowance, but of late the tithes of *Sadlecomb* have been of more worth than the tithes of *Newtimber*; that the tithes of *Sadlecomb Farm*, being a portion of tithes, did heretofore belong to the priory of *Saint Pancras*, in *Lewes*, upon the dissolution whereof the same came to THE CROWN, and on the third of *May*, in the second year of *Queen Elizabeth*, was granted to *E. and T. Middleton*, and their heirs, and by several conveyances the same are now come to the plaintiff by purchase, and that ever since until lately, the said *Dunfall* and his predecessors have continued the said exchange, and the occupiers of *Newtimber Farm* paid no tithes for the same, until of late the defendant *Dunfall* did exhibit his bill in this court, pretending title to the tithes of both the said farms, to which bill the plaintiff put in his answer, and several witnesses were further examined, and upon the hearing, the Court directed an issue at law, to try who had right to the tithes to *Sadlecomb Farm*, but which he refused to try, and afterwards preferred another bill in this Court against the defendant *Friend*, who neglecting to examine proper witnesses, the Court decreed against him to account for the tithes of *Sadlecomb Farm*; that the parsons of *Newtimber* parish have, by way

(a) See another cause between the same parties, Trin. 12. Wm. 3. Also a long contested cause, Hil. 13. Wil. 3.

of exchange, taken the tithes of *Sadlescomb Farm*, in lieu of the other farm, and not as a rectorial right, and then the occupiers of *Newtimber Farm* paid no tithes; that the said *Dunfall* continued the said exchange till three years ago, and then waived it, and hath since taken the tithes of *Newtimber Farm*, and preferred his bill against the defendant *Friend*, the occupier of *Sadlescomb Farm*, as before stated; that the plaintiff purchased the same with the manor and farm of *Newtimber*, for a valuable consideration, and to induce him thereto, a lease of the said tithes was produced and accepted of by the then incumbent. The bill therefore prayed, that the plaintiff may examine his witnesses to *perpetuate their testimony*, and be quieted in the possession of his portion of tithes, arising upon *Sadlescomb Farm*, by the decree of this Court, and that the defendant *Friend* may account with the plaintiff for the said tithes.

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The defendant *Dunfall*, by his answer, said, that the plaintiff is patron of the parish of *Newtimber*, and lord of the said manor, and owner of *Newtimber Farm*, but denied that he had any right to the tithes of *Sadlescomb Farm*, and insisted that all the tithes of the said parish belonged to the rector.

The rector of
Newtimber denies
the plaintiff's
right to the tithes
of *Sadlescomb*.

The defendant *Friend* confessed, that he was occupier of *Sadlescomb Farm*, and had held the same by several leases from *Lord Viscount Montague*, and his father, and that the same is let to him by the name of "the site of the manor of *Sadlescomb*," that when he entered thereon, the parson of *Newtimber*, then acknowledged to him, that the tithes of the said farm did belong to the owners of *Newtimber*, and that he claimed the tithes thereof by way of exchange, in lieu of the tithes of *Newtimber Farm*, and that the tenants of it did not pay any tithes until of late, and that the defendant *Dunfall* waived the said exchange.

The occupier of
Sadlescomb Farm
says, that the
tithes thereof
were exchanged
in lieu of the
tithes of *New-*
timber Farm.

The defendant the *Lord Bishop of Chichester* said, that he is ordinary of the parish of *Newtimber*, and knew nothing of the matter in difference, and hoped the Court would do nothing in prejudice of the church.

The ordinary of
the church of
Newtimber, an-
swers as ordina-
ry.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff *Osborne* and defendant *Dunfall*.

Upon opening the bill, and all the answers, except that of the defendant *Dunfall*, and reading an affidavit of due service of *subpœna* to hear judgment, and no counsel appearing for him, and reading his answer; it appearing, that the plaintiff hath right to all tithes arising upon *Sadlescomb Farm* aforesaid, being a purchaser for a valuable consideration of the same, and that the portion of tithes do not belong to or are part of the rectory of *Newtimber* aforesaid.

The Court of o-
pinion that the
plaintiff is enti-
tled to all the
tithes of *S. dle-*
comb Farm.

It

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against
DUNSTALL
 AND OTHERS.
 and grant an injunction to quiet him in the enjoyment of the same against the rector of *Newtimber*.

IT IS THEREFORE, this seventh of *December* 1703, ordered and decreed, that the plaintiff's right and title to the tithes arising upon and from *Sadlescomb Farm* aforesaid, be and are hereby ratified and established by this Court, and that the said plaintiff *Osborne* and his heirs shall be quieted in the possession thereof, by the injunction of this Court, and shall hold and enjoy the same against the defendant *DunSTALL*, and his successors, rectors of *Newtimber* aforesaid, and all claiming by, from, or under him, or them.

AND IT IS FURTHER ORDERED, that the defendant *Friend* shall account with and satisfy the plaintiff for the value of the tithes of the said *Sadlescomb Farm*, for the time demanded by the bill, and it is referred to the deputy remembrancer to take the said account, and report the same; and the said defendant *Friend*, as to the tithes, is to be indemnified and saved harmless by this decree against the defendant *DunSTALL*, and all persons claiming by, from, or under him, unless the said defendant *DunSTALL* do shew good cause to the contrary, he first paying five pounds, costs of the day, before he be heard.

The cause reheard,

and another issue directed

The above cause came on to be heard again on the twenty-seventh day of *January* last, before the right honourable HENRY BOYLE, *Esq.* Chancellor, and under treasurer of this Court, and SIR E. WARD, *Knt.* Lord Chief Baron, and the rest of the barons, and upon hearing whereof, and upon reading of several proofs, and on long debate of the matter, THE COURT thought the matter proper for a *trial at law*

But the defendant *DunSTALL* desired time to consider thereof, and a proposal of a reference or agreement being made, but not taking effect,

to try what portion of tithes the plaintiff is entitled to out of *Sadlescomb Farm*.

The cause came on the twenty-first of *February* 1703, for further directions, and upon consideration had of the matter, an issue was ordered to be tried by a special jury, whether the plaintiff be entitled to a portion of tithes arising upon or out of *Sadlescomb Farm*, or any part thereof in the parish of *Newtimber*, or not, and what that portion is. The depositions taken in the former cause of *DunSTALL v. Osborne*, to be made use of as well as those taken in this cause.

The plaintiff non-suited, and a new trial granted.

A trial was accordingly had, and the plaintiff became non-suited, for want of producing a fine, levied in the court of common pleas, between the now plaintiff and *Perry Cust, Esq.* and others, and therefore, on the twenty-third of *November* 1704, a new trial was ordered to be had at the next assizes upon the former issue, upon paying the defendant's costs out of pocket, for the former trial, and also the costs of this day to be taxed, and also upon payment of the composition for the plaintiff's tithe; for this present year, without any deduction, other than what

what the plaintiff hath already paid in part thereof to the defendant, for taxes or otherwise, which costs and compositions are to be paid in a fortnight's time, after they are ascertained, otherwise the bill to be dismissed.

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against
DUNSTALL
AND OTHERS.

In pursuance of the above order a new trial was had, and the jury found that the said *Thomas Osborne* is entitled to one pound, six shillings, and eightpence, yearly, and no more, being the said parcel or portion of tithes within mentioned, arising upon or out of the farm called *Sadlescomb Farm*, or any part thereof, in manner and form as the said *Osborne* against the said *Dunfall* hath declared, and give sixpence damages and forty shillings costs.

The jury find plaintiff entitled to only 1l. 6s. 8d. a year out of *Sadlescomb Farm*.

THE COURT therefore, on the fourth of *May* 1705, seeing no cause to relieve the plaintiff, ordered and decreed, that the said bill shall stand dismissed.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

NICHOLLS *against* DUDLEY.

Buckinghamshire, 9th December 1703.

MICH. TERM,
2. Q. ANNE.

THE bill stated, that the plaintiff, for forty years past, had been and then was rector of *Great Woolston*, in the county of *Buckingham*, and lawfully entitled to all glebe lands and tithes of all sorts, and all customary and other rates and payments due and payable in lieu thereof; that about the seventh of *January*, in the thirty-sixth year of *Charles the Second*, *W. Dudley*, and other freeholders, owners, and occupiers of lands and tenements within the said parish, being desirous of having their lands inclosed, but that by reason of the intermixture of several parcels of each others lands, and of the glebe and other lands belonging to the said rectory, it could not be effected without the plaintiff's consent, they, the said freeholders and landholders, by articles, dated as aforesaid, did covenant and agree for the inclosure of the same, and that no wrong might be done to the plaintiff or his successors, did also further agree that the portions and compositions for their tithes due to the plaintiff and his successors, should be settled and made payable; and by indenture, dated the fourth of *January*, in the twenty-seventh year of *Charles the Second*, did direct and appoint, that the rector and incumbent of *Great Woolston*, for the time being, should from time to time, and at all times, thereafter receive, in lieu of all tithes and tenths whatsoever arising therein, the annual sum of forty-six pounds, to be

The landholders of the parish of *Great Woolston*, in the county of *Buckingham*, pay, by agreement, to the rector 46l. a year, in lieu of the tithes of certain inclosed lands.

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against
DUDLEY.

be paid quarterly; that the defendant, thinking his proportion of the said forty-six pounds to be too much, did, by indenture dated the fifth of *January*, in the twenty-seventh year of *Charles the Second*, agree to pay eighteen pounds a-year, quarterly, for his share, which he had constantly paid till three quarters of a-year past; that the sum of thirteen pounds and ten shillings for the said three quarters of a-year is still due and owing to the plaintiff; and that the defendant, though often requested, refuses to pay the same.

The defendant set forth, that he is a stranger to the agreements for the inclosure pretended by the bill, but believed that such agreement and inclosure and such deeds were made, and a fine acknowledged; that he hath for four years last past occupied all the lands and estate which his late father held, at the time for the composition for and in lieu of tithes and glebe in the bill mentioned.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides, and upon reading several depositions, and the plaintiff proving the contents of several writings that were burnt, relating to the said agreement, dated the twentieth of *November* 1704, purporting a mutual agreement for the dividing of their lands, whereby it was mutually agreed and concluded by all the parties therein concerned, that provision should be made for the parson for the great tithes of *Woolston*, according to the determination and discretion by *H. Whitbread*, and *R. Gilpin*, to whom it was thereby wholly referred, and the will of *G. Dudley*, senior, grandfather of the said defendant, and upon debate of the whole matter, and hearing what could be alledged by the counsel for both sides;

THIS COURT doth order, adjudge, and decree, that the said articles, agreements, and compositions for the said tithes, are hereby for ever established, ratified, and confirmed for the future, and that the said defendant shall forthwith satisfy and pay to the said plaintiff, eighty-one pounds, being the arrears of the eighteen pounds a-year, till *Michaelmas* 1703, and that the said defendant, his heirs and assigns, owners and occupiers of the said lands, shall for the future continue the payment of the said eighteen pounds a-year, for and in lieu and satisfaction of the tithes of all the lands of the defendant in *Great Woolston* aforesaid, to the plaintiff, rector of the said parish, or to his lessee or assigns, or his successors, their lessees or assigns, for ever, with costs, to be taxed by the deputy remembrancer of this Court.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.
GODFREY

GODFREY *against* TRINDER and Others.*Oxfordshire, 21st February 1703.*HILARY TERM,
2. Q. ANNE.

THE bill stated, that the plaintiff was seised in fee of the rectory of *Holwell*, in the county of *Oxford*, and of all tithes, both great and small, thereunto belonging; that the defendant, *H. Trinder*, was owner of all the lands there, except one yard land, which the plaintiff had for a long term of years; that there having been several suits between them, both in law and equity, the plaintiff consented to an inclosure; for which purpose articles were entered into the twenty-third of *May 1693*, as stated in the bill; but that the defendant had not complied with the said articles. The bill therefore prayed, that the defendants may, for the future, sow four hundred acres, or pay two shillings an acre for what is wanting, pursuant to the articles; that the acres may be measured; that the defendants may pay tithes of the green pease and turnips; that they may maintain the mound between the two lordships; and that the agreement may be performed, the tithes paid, and the plaintiff quieted in his possession.

The rector of *Holwell*, in *Oxfordshire*, files his bill to obtain specific performance of certain articles respecting his tithes.

The defendants put in their answers and plea, and pleaded an original and cross bill, and all the proceedings therein in the court of chancery; and answered as to part, and set forth their quantities, and said, that tithes of turnips were not due to the plaintiff, for that *Holwell* is within the parish of *Broadwell*, where there is a vicarage endowed, whereto belongs all small tithes (all but corn and hay cut at harvest); and that the defendant *Charles Trinder* had compounded with the vicar of *Broadwell*.

The defendants plead a suit and decree in the court of chancery on the same subject;

To which plea and answer of the defendants *Henry* and *Charles Trinder*, and also to the two answers of the defendant *Bolt*, the plaintiff replied; and the defendants rejoined; and witnesses were examined on both sides.

Upon opening the pleadings, and reading the depositions of several witnesses examined on both sides in the cause, and upon reading several of the proceedings in the causes lately depending in the court of chancery between the now plaintiff and *Henry* and *Charles Trinder*, and which were pleaded by the said defendants in this cause; and, upon long debate of the matter, it appearing to the Court that the plaintiff had replied to the said plea, and that there are such decrees, orders, and other proceedings in the court of chancery as in the said defendant's plea are set forth, and that the said matters pleaded to as aforesaid are settled and determined by the high court of chancery,

and it appearing the matter was settled in chancery,

IT IS ORDERED BY THE COURT, that the said defendants be, and are hereby dismissed of and from the said bill, and the matters and things therein contained.

the bill is dismissed.

HILARY TERM,
2. Q. ANNE.

WICKHAM *against* DUFFIELD and Another.

Yorkshire, 23d February 1703.

The lessee of the prebendary of *Fenton*, in *Yorkshire*, claims the small tithes of the parish of *Sherburne*, except what grows on tofts and crofts.

THE bill stated, that the plaintiff was, by virtue of a lease dated the twenty-third of *June* 1699, made, by *R. Allham*, D. D. prebendary of *Fenton*, in the county of *York*, seised of the prebend of *Fenton*, and all the rectory, lands, tithes, oblations, and other duties thereunto belonging (except the presentations and nominations of and to the respective vicarages of *Sherburne* and *Fenton*, and a messuage in the close of the church of *Saint Peter's* in *York*); and being so seised, ought to receive and enjoy the said rectory of *Sherburne*, and all tithes belonging to the said prebend of *Fenton*, and in particular the tithes of rape, hay, and lamb throughout the whole parish, except what grows on tofts and crofts; that the defendant *Duffield* was vicar of *Sherburne*, and had, from *Michaelmas* 1700 till now, occupied several lands and closes, arable and pasture, within the said parish, not being toft or croft, whereon he sowed corn and rape seed, and depastured several cattle and sheep, and had lambs fallen, the tithes whereof ought to have been paid to the plaintiff; that the defendant *Butler* likewise occupied several lands, and had corn and rape, the tithes whereof he refused to pay to the plaintiff, pretending that the same are due to the defendant *Duffield*, as vicar of the said parish of *Sherburne*; whereas, by ancient endowment, the said vicar is not to have the tithes of wool, lamb, or other tithes that proceed from agriculture, except the tithes of ancient tofts and crofts.

The vicar of *Sherburne* claims all the small tithes, particularly the tithe of rape seed.

The defendant *Duffield* said, that he was vicar of *Sherburne*, and had been presented thereto by the said prebendary of *Fenton*; and that, in right of the said vicarage, he was entitled to all manner of small tithes in kind, except wool and lamb, and had received the tithes of rape seed, as well in open fields as in inclosures, without a claim having been laid thereto by the prebendary of *Fenton*, except what the plaintiff and his late father had done some few years ago, who nevertheless permitted the former vicar to receive half the tithe of the rape seed; and he denied the endowment as stated in the bill, and the plaintiff's right to any of the tithes of rape seed.

On reading the endowment,

On reading several depositions, and an endowment of the vicarage of *Fenton* in the year 1240, and on full debate of the matter,

the bill is dismissed.

IT IS ORDERED BY THE COURT, that the said bill shall be, and the same is hereby dismissed, but without costs.

DEAN

DEAN AND CHAPTER OF WELLS *against* DURSTON and Another. EASTER TERM,
3. Q. ANNE.

Somersetshire, 22d May 1704.

THE bill stated, that the defendant was installed prebendary of the prebend of *Scamford*, otherwise *Shalford*, founded in the cathedral church of *Wells*, about the sixteenth of *August* 1684, and that out of such prebend there is yearly payable, by the prebendary thereof, to the vicars choral of the said cathedral, or to the plaintiffs, a certain sum called *stall wages*; viz. as many prebendaries as there are vicars choral are to pay their *stall wages* to the vicars choral, and the vicar choral who serves the stall of either prebendary, ought to be paid by such prebendary only; that there being more prebendaries and stalls than vicars choral, the insupplied ones are termed *vacant stalls*, the *stall wages* whereof ought to be paid to the plaintiffs, for the use of the fabrick of the church; that out of such *stall wages*, whether possessed by vicars or vacant, there are tenths paid to THE CROWN, the vicars choral pay for such as they possess, and the plaintiffs, the dean and chapter, for the vacant stalls; that the prebendary of *Scamford*, at the time of the defendant *Durston's* instalment, was, and still is a vacant stall, the *stall wages* whereof belong to the plaintiffs, who, from his instalment, have paid the tenths for it to THE CROWN; that, time out of mind, there hath been yearly payable out of *Scamford* prebend forty shillings to the dean and chapter for the use of the fabrick of the said church, for which there was due to the plaintiffs thirty-four pounds ten shillings at *Michaelmas* before filing this bill, which the defendant ought to pay; that the parsonage of

Stall wages of 40s. a year are payable to the prebendary of *Shalford*, in *Somersetshire*.

, in the county of *Essex*, doth belong to the said prebend, the chief rent whereof is six pounds, twelve shillings, and fourpence, payable to the prebendary and his successors, and also forty shillings a-year to the vicars choral of the said cathedral for *stall wages*, which hath constantly been demised for lives by the prebendaries of the said prebend, at and under the said yearly rents, and in the leases thereof there is and ought to be a covenant for the payment of such sums to the prebends, and to the vicars choral; that the defendant *Hinton* was, and for divers years had been entitled to the said parsonage by virtue of some deeds to him made by the defendant *Durston*, who refuses to pay the said forty shillings *per annum stall wages* and the arrears thereof, and that the defendant *Hinton* refuses and keeps back the payment thereof, pretending, that he is only accountable to the prebend, and not to the plaintiffs. The plaintiffs, therefore, prayed to be relieved.

The defendant *Durston* confessed his instalment into the said stall, and that there are duties called *stall wages* payable to the

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vicars choral out of the prebends to which they belong; that in his lease of the prebend to the defendant *Hinton*, there is forty shillings reserved and made payable to the vicars choral by the name of *stall wages*, but believed, that it belonged to him, no vicar choral being sitting in or belonging to the said stall, and said, that he is willing to act as the Court should direct.

The defendant *Hinton*, by his answer, believed that there had been forty shillings a-year paid out of the said prebend for *stall wages*, and that he claimed the said prebend under a lease from the defendant *Durston*, dated the eleventh of *January* 1699, at six pounds, twelve shillings, and fourpence a-year, and the forty shillings *per annum* for *stall wages* aforesaid, both of which are paid to *Michaelmas* 1699. He confessed that there is due from him, for rent and *stall wages* at *Lady Day* 1702, twenty-one pounds, ten shillings, and tenpence, and submitted to pay the plaintiffs forty shillings *per annum*, and the arrears out of the money in his hands, and said that he was willing to act as he should be directed.

The plaintiffs replied; the defendants rejoined; and witnesses were examined.

IT IS ORDERED, upon reading the proofs in the cause, that the defendant *Durston* shall account with and satisfy the plaintiffs the arrears of the said forty shillings *per annum* from the time he was installed to *Michaelmas* 1699, and that from thence the defendants do account for the arrears, and do continue the payment of the said forty shillings a-year as the same shall accrue due for the future, so long as their instalment in the said prebend shall continue, and the said stall shall remain vacant; and it is referred to the deputy remembrancer to take the said account, but the defendant *Hinton* is not to pay any costs, and is to be indemnified against the defendant *Durston* for what he shall so pay to the plaintiffs in obedience to this decree.

EASTER TERM
3. Q. ANNE.

GEE against PERCH.

Kent, 11th May 1704.

The lessee of the rectory of *Orpington*, in *Kent*, claims the tithes of wood, ash poles, and hops.

S. C. Rayn. 97.

THE plaintiff, as administrator, with the will annexed, of *Mary Gee*, widow, deceased, stated, that the said *Mary Gee*, for two years ending at *Michaelmas* 1698, was lessee of the rectory of *Orpington*, in the county of *Kent*, and that the plaintiff, for two years ending at *Michaelmas* 1702, was, and now is lessee of the said rectory; that by virtue thereof the said *Mary Gee* and the plaintiff were, for those years respectively, entitled to all tithes of corn, hops, wood, and other things; that the defendant used a wood called *Clay-wood*, containing twenty acres, and another wood adjoining to *Crawton Heath*, containing six acres, and divers other woods in the said parish

from

from which, in the said years, he did fell, grub, cut down, and carry away quantities of wood, the tithes whereof were of great value; that the said defendant did, in the third year, hold and enjoy several acres of hop grounds in the said parish, upon which he had grown several quantities of hops, which he gathered and carried away, the tithes whereof ought to have been duly set out as they became due; that the defendant did not set out his tithe wood in such manner as he ought to have done, he leaving only some loose ranges or heaps of wood for his tithes, without ingrain, binding, or making up the same, as by the law, custom, and manner of tithing used in the said parish he ought to have done; that the defendant did not, in the said years, set out his tithe hops as he ought to have done, but left, as he pretends, the tenth hill or pole without picking, in lieu of tithes; and that the defendant ought to have picked his hops from the bines or poles before he set out the tithes thereof.

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The defendant said, that for the years in the bill mentioned he had held and occupied in the said parish about one hundred acres of coppice wood, and particularly *Clay Wood*, containing twenty acres, and the wood also adjoining to *Crawton Heath*, four acres; that in 1698 he cut *Crawton Heath wood*, and in 1701 and 1702 *Clay wood*, but that before he cut down and carried away any of the said wood, he applied to the plaintiffs to see the tithes of the said woods set out and separated from the nine parts as followeth; viz. when his servants had cut down a small parcel they piled it up in ten several heaps of equal size and goodness, and, to prevent disputes about the tithes, he had the said ten heaps viewed by indifferent persons, and caused the best of the said ten heaps to be left for *Mrs. Gee* and the plaintiff's tithes, and then the defendant's workmen proceeded in the same method from place to place, until the tithes of both woods were duly and fully set forth; and he said, that he believed that the like method of paying tithe wood is, and was the only method used in the said parish, and that the said wood was not to be size bound, or made up at the defendant's charge into a marketable ware; that the wood adjoining to *Crawton Heath*, when cut down, was not worth above forty shillings an acre, and *Clay wood* three pounds an acre, to be sold, and that, after the tithes set out, the said woods cost him more than the remaining nine parts of the same were worth; that notwithstanding he set out the full tenth part of *Crawton Heath wood*, wherein he had for his nine parts but three thousand six hundred and seventy bays; that he had used three thousand four hundred and twenty-three of the same for necessary firing upon his farm, for which he need not to have paid any tithes; that in 1702 he cut down and carried away one load and a half of ashen trees, of about fifty shillings value, without setting out his tithes, he having occasion to use them to make and mend ploughs, harrows, and other utensils of husbandry about his farm,

The defendant says, that the ash poles were for the purposes of husbandry.

That he set out his tithe wood in piles, without size-binding it, or making it up.

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That he set out his hops, not by the tenth hill, but by the tenth part of the ten hills stripped from the poles and left in a heap for the plaintiff to pick.

farm, and sold no part thereof; for which reasons, and because they were about twenty years growth, no tithes were due for the same. The defendant also stated, that in 1698 and 1702 he had three acres of hop ground, and being informed that there was a composition between the former farmer of the said rectory and his farm, that it should pay ten shillings an acre to the rector for every acre of hop ground, whether hops or no hops grew thereon, he, for the year ending at *Michaelmas* 1698, did pick and carry away the said three acres of hops without setting out the tithe, but before he picked the said hops he went to the defendant, and desired him to take his tithe hops in kind, or ten shillings an acre, which he refused, until the court had decided whether he should pay his hops in kind or ten shillings an acre; that before this suit was commenced, he tendered to the said *Mary Gee*, or to the plaintiff, ten shillings an acre for the tithe of his said hops for the said year, which was as much as they were worth before they were picked and dried; that all the hops growing on the three acres that year were not worth above fifteen pounds, and the tithes thereof, if taken in kind, not worth above thirty shillings, which he is ready to pay; that for the three acres of hops growing in 1702 he gave the plaintiff notice when he intended to pick them, that he might see the tithes thereof duly set out, and which he did set out; viz. the defendant's servants separated from the freehold ten hills at a time, and then set forth all, not the tenth hill, but the tenth part of the ten hills stripped from the poles, for the plaintiff's tithes of the said ten hills, and so left the same in a heap for the plaintiff; and so the defendant's workmen, upon cutting every ten hills, set forth the full tenth part of such ten hills in an heap, until the plaintiff's tithe of the said hop ground was set out, which said heaps were rather more than the tenth part of the defendant's said hops; and he said, that all the hops he had on the said three acres in the said year for his nine parts did not amount to fifty hundred weight, and were not worth above twenty pounds, and which he kept for his own use; and he denied that the occupiers of hop grounds ought to pick their hops before they set out their tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the depositions, and hearing what could be alledged by counsel on both sides, and on long debate of the matter,

The Court of opinion, that the wood ought to be bound up;

THE COURT are of opinion, and do declare, that the way and method used by the defendant in setting out his tithe wood by loose heaps, in boughs, is a good way of setting out his tithe wood; but that it appears by the proofs taken in the cause, that the usage and manner of tithing of wood in the parish is, and time out of mind has been, for the occupiers to bind up the

the wood before the tithes thereof are set out, and that no such manner of tithing by loose heaps or ranges was ever known in the parish.

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THE COURT do also declare, that the method insisted on by the defendant for setting out his tithe hops, by stripping the bines from the poles and leaving the same in loose heaps before the hops are picked and gathered, is no good setting out of the tithe of his hops, but that the hops ought to be picked and gathered from the bines before the same are titheable.

and that hops ought to be picked and gathered from the bines before they are tithed.

IT IS THEREFORE ORDERED AND DECREED, that the defendant do pay to the plaintiff for all the tithes of the woods in the bill mentioned; to wit, for *Clay Wood*, and the wood lying near *Crawton Heath*, according to their respective values thereof when the wood is cut and bound, as usually has been done by the occupiers.

They decree the defendant to account.

IT IS ALSO FURTHER ORDERED AND DECREED, that the defendant do account for the tithe of his hops in the years in the bill mentioned, according to the value of the defendant's hops in the said years respectively when picked and gathered from the bines.

WARD, *Chief Baron*, said, that if wood has been used to be bound by the parishioners, the tithes of the said woods ought also to be bound up. That as to hops, the tithes of them cannot be paid till they are picked; and that ash poles, not fit for timber, are to pay tithes.

BURY, *Baron*, said, that the method set forth by the defendant for setting out the tithes of wood in heaps is not good. That ash poles are titheable though they are of twenty years growth, and, as to hops, that the defendant's *parlance* was not good.

PRICE, *Baron*, as to the tithe of hops, was of the same opinion, and that the defendant do account. But as to the ash poles used in husbandry, he thought they were not titheable. And as to wood, that the defendant had rightly set it out, and that the plaintiff ought to have no account.

SMITH, *Baron*, said, that as to ash poles, he was of opinion that the defendant is not to account; but that, as for the tithe of hops, the defendant's *parlance* was not good, he having not rightly set out the tithes thereof. And that he ought to account for the tithe of wood, the plaintiff having proved the usage.

NOTE. The plaintiff relinquished his claim as to the ash poles.

TRIN. TERM,
3. Q. ANNE.

HILL *against* WYATT.

Gloucestershire, 11th July 1704.

The vicar of *Loughborough*, in *Gloucestershire*, is entitled to the great and small tithes of so much land as lies *ridge and furrow* on *Southfield Hill*.

THE vicar of *Loughborough*, in the county of *Gloucester*, claimed all tithes, both great and small, arising within the manor of *Southfield*, lying within the said parish.

The defendant confessed the plaintiff to be vicar of *Loughborough*, but denied that the vicarage was endowed with the tithes of the manor of *Southfield*, or that the plaintiff was entitled thereto; and said, that he believed that *Sir C. Shuckburgh*, his landlord, was entitled to the tithes of all the lands held by him; that the plaintiff's predecessors (except *Mr. Marton*) never received tithes of the lands; and that he knew not or believed that any other tithe was paid, save that the plaintiff's servants took some corn and hay from off *Southfield Hill* without the defendant's consent.

Upon reading several deeds and depositions, and the answer of the plaintiff *Hill* to a bill exhibited against him in this court by *Sir C. Shuckburgh*, and the depositions of witnesses taken in the said cause, and on full debate,

IT IS ORDERED BY THE COURT, that the defendant shall account with and satisfy the plaintiff for the value of the tithes of the lands in question, lying *ridge and furrow*, by them respectively occupied on *Southfield Hill* demanded by the bill.

TRIN. TERM,
3. Q. ANNE.

DEAN AND CHAPTER OF LITCHFIELD *against* WOODROFFE.

Staffordshire, 26th June 1704.

The prebendaries of *Sandiacre*, in *Staffordshire*, pay 20s. a year for *stall wages* to the dean and chapter of *Litchfield*.

See Cro. Car. 546.
1. Jones, 435.
March, 31.

THE bill stated, that by the ancient custom and local statutes of the cathedral church of *Litchfield*, every prebendary whose stall is not filled with a vicar choral is to pay 20s. a year to the plaintiffs towards the repairs of the church; that in 1678 the defendant was collated to the prebend of *Sandiacre*, in the said church, and installed, and had ever since continued therein.

Upon opening the bill, and reading an order made the eighth of *May* last, whereby the defendant undertook to appear *gratis* at the hearing, and reading the answer, and no counsel appearing for the defendant,

IT IS ORDERED AND DECREED, that the defendant shall account with the plaintiffs for the arrears of the said yearly payment of twenty shillings *per annum* for vacant *stall wages* from the time of the last payment, and continue the yearly payment for the future, so long as he shall continue prebendary of the said prebend of *Sandiacre*.

DANVERS

DANVERS *against* WOOD.TRIN. TERM,
3. Q. ANNE.*Essex, 12th July 1704.*

THE bill stated, that *J. Scambler*, clerk, rector of *Shenfield*, in the county of *Essex*, did, about the twentieth of *March 1696*, demise all tithes whatsoever arising in the said parish and the titheable places thereof, to the plaintiffs, his executors, &c. for seven years; that the defendant, for years past, hath occupied lands and tenements therein, and hath withheld from him the tithes thereof.

The rector of *Shenfield*, in *Essex*, claims tithes in kind.

The defendant admitted, that *J. Scambler* might be rector, and make such lease; but denied, that he ever held any lands or tenements within the said parish of *Shenfield*; and said, that he now dwells, and for seventeen years past has dwelt, in a little cottage of the value of between thirty and forty shillings a-year, near *Brentwood*, in the parish of *Southweale*, held of the manor of *Cosled*, in the parish of *Southweale*, and that he never held any lands in the said parish, but only the said cottage; and set forth, that he kept two ewes and a sow, which fed on the common, but could not set forth the value, for that he never knew or heard that any tithes were paid or demanded by either the rectors or their lessees of the parishes of *Southweale* or *Shenfield* for any sheep or cattle going on the commons, until lately the plaintiff demanded of the defendant tithes for the defendant's sheep, he being only a day-labouring man.

The defendant says, he is a poor labourer, who inhabits a cottage on a common near *Brentwood*, in the parish of *Southweale*, and has two ewes and a sow which run on the common; and denies having any land in *Shenfield*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and on reading several depositions of witnesses in the said cause on both sides, and upon debate of the matter,

THE COURT do not think fit to relieve the plaintiff on his said bill; and thereupon order, that the bill be dismissed, with full costs for the defendant, to be taxed by the deputy remembrancer.

The bill dismissed, with full costs.

WENTWORTH, Bart. *against* THE ARCHBISHOP OF YORK and Another.TRIN. TERM,
3. Q. ANNE.*Yorkshire, 17th July 1704.*

THE bill stated, that the plaintiff is, and for several years last past has been, seised of the manor of *Crawind*, with the appurtenances, in the county of *York*; that the defendant, the Archbishop of *York*, and his predecessors, have, time immemorial, been seised in fee, in right of the said archbishopric, of the

The lord of the manor of *Crawind*, in the county of *York*, states, that he exchanged *Day Farm* with the

vicar of *Crawind*, in lieu of his vicarial tithes, &c.
rectory

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rectory appropriate of *Crawind*, and of the advowson of the vicarage of *Crawind*, within the diocese of *York*; that the vicarage being endowed, the vicars thereof, for the time aforesaid, have yearly enjoyed and received the tithes in kind of hay and corn yearly growing upon thirty-two ox-gangs of arable and meadow ground which lie dispersed in several parcels in and throughout the common fields called by the several names of *Robberfield*, *Sadlandfield*, and *Bawnfield*, which, together with all other tithes of hay and corn in the said township, belonging to the said vicarage, are usually computed to be worth annually twenty-five pounds, out of which the parliamentary taxes and other assessments generally come to three pounds, five shillings a-year; that the said vicars for the time being have yearly had and enjoyed two cowgates and one oxgate for sixteen sheep and the depasturing of two cows, one ox, and six sheep, in certain grounds of *Crawind* aforesaid, called *the Moor*, which were usually valued at twenty-one shillings a-year; that the said vicars have yearly had and enjoyed the depasturing in *averidge time* and the *winter eatage* of and in the common fields and pastures of and belonging to *Crawind*, for the said three gates, viz. for two cows and one ox, and also the liberty and advantage of depasturing in *averidge time* in the said last-mentioned common fields for all the calves the vicar usually bred, the value of which was about seven shillings a-year; and also a horsegate in the *Inges of Crawind* from *Lady Day* to *May Day*, at two shillings and sixpence a-year, or some yearly rent or composition in lieu of all the said premises; that the plaintiff being so seised of the said lordship and lands out of which the tithes and other profits were issuing, and the defendant *Wyke* being the present vicar, the plaintiff and the said *Wyke*, about *June* last past, came to an agreement, that the plaintiff and his heirs should for ever afterwards peaceably and quietly hold and enjoy all the aforesaid tithes, beast gates, and cattle gates, or right of common, and other the annual profits aforesaid, and other the predial tithes within the said township belonging to the said vicarage, without the let, suit, trouble, or disturbance of the defendant *Wyke* and his successors, vicars of *Crawind*; and that the plaintiff should hold and enjoy the premises out of which the said tithes and profits should arise and accrue absolutely discharged from payment of all tithes to be claimed by the said *Wyke* and his successors vicars there; that the plaintiff being seised in fee of the farm, closes, and grounds in *Barugh*, otherwise *Bargh*, called *Day Farm*, of sixty pounds a-year, the said plaintiff, in exchange, compensation, or composition for the said tithes and premises aforesaid, agreed for ever afterwards to pay to the defendant *Wyke* and his successors one clear yearly annuity of twenty-seven pounds, to be issuing out of the farm, closes, and grounds in *Bargh* aforesaid, payable quarterly, by even portions, without deduction for any taxes, impositions, or assessments whatsoever; and that it should be lawful for

for the defendant *Wyke* and his successors to enter and distrain, in case any of the said quarterly payments should be in arrear twenty days; and that the defendant *Wyke* and his successors should for ever after quietly hold and enjoy the eighth part of all those several parcels of ground, called *the Oakcliffs*, with *the Rakes* thereunto belonging; the eighth part of *the Liskeu* and of *the Flatts* in *Crawind*, as the same are now divided from the rest of the premises; that the said annuity and eighth part of the grounds before mentioned are of a greater value, and will be more advantageous to the said vicars, than the tithes and matters aforesaid, and will free the defendant *Wyke* and his successors from the yearly charge by keeping and maintaining servants and cattle for gathering and collecting the said tithes, and also from all taxes which are paid for the same; that the defendant the *Archbishop of York* being patron and ordinary of the vicarage church, was satisfied that the said agreement was for the benefit of the vicarage; that the plaintiff hath all along paid, and still is willing to perform the said agreement, and to abide such decree as the Court shall make therein, or do or execute any act or deed for securing the said annuity and premises to the defendant *Wyke* and his successors, so that he perform the said agreement, and that the archbishop confirm the same. The bill therefore prayed, that the defendant *Wyke* may set forth, whether he did not come to such an agreement, and whether the said annuity and premises be not more advantageous to the vicarage than the said tithes; that the defendants may perform and confirm the said agreement; and that it may be established by the decree of this court.

WENTWORTH
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The defendant *the Archbishop of York* by his answer said, that true it is that he now is, and his predecessors have been seised in fee, in right of the said archbishopric, of the rectory appropriate aforesaid, and of the advowson of the vicarage; that the defendant *Wyke* now is vicar there, and came to such agreement; that there are several tithes of corn, hay, wool, and other tithes, belonging to this defendant, in right of the said rectory, which are distinct, and no part of the said tithes belonging to the said vicarage; that the defendant being patron and ordinary as aforesaid, and being satisfied that the said bargain and exchange is for the benefit of the said vicarage, is content and willing to ratify and confirm the same, and to do and abide as the Court shall decree therein, so as the same do not prejudice his right to any of the tithes in *Crawind* aforesaid, belonging to the defendant or to the said rectory, whereto the said defendant is entitled as aforesaid.

The archbishop
of York, as pa-
tron and ordina-
ry, consents to
the said ex-
change.

The defendant *Wyke* by his answer said, he believed the plaintiff is, and for several years has been owner of the lordship of *Crawind*, and other the premises in the bill mentioned; that he, the said *Wyke*, is, and for several years past has been, vicar of
the

The vicar con-
fesses the ex-
change.

WENTWORTH
against
THE ARCHBISHOP OF YORK
AND ANOTHER.

the said vicarage, and that he and his predecessors have received the tithes of corn and hay arising out of the lands in the bill mentioned, or some satisfaction for the same, together with the several other profits, cattle gates, and beast gates. He confessed, that he and the plaintiff came to such agreement as in the bill is stated; and believed the said annuity and eighth part of the other premises are of a greater yearly value, and will be more advantageous to the vicarage than the tithes in kind and other profits and beast gates were or are in respect of the assessments and charge of collecting such tithes and duties. He admitted, that the archbishop is patron and ordinary of the said vicarage, and that the plaintiff and himself hath hitherto performed the said agreement and premises; and agrees to abide such decree as the Court shall make therein.

The cause came on to be heard on the bill and answers.

The said exchange ratified, confirmed, and established.

IT IS ORDERED, ADJUDGED, AND DECREED BY THIS COURT, that the said agreement shall be and is hereby ratified and confirmed; and pursuant thereto, the said plaintiff is to hold and enjoy all the said tithes, beast gates, cattle gates, and other profits belonging to the said vicarage against the defendant *Wyle* and his successors, vicars of *Crawind*, for ever; and also to hold and enjoy the premises out of which the said tithes and profits shall arise and accrue, absolutely discharged from the payment of all tithes to be at any time hereafter claimed by the defendant *Wyle*, or his successors, vicars of *Crawind*; and in compensation thereof, the said plaintiff and his heirs is and are to pay the defendant, and his successors, vicars of *Crawind*, one yearly annuity of twenty-seven pounds, to be issuing out of the said farm called *Day Farm*, and to be paid quarterly, by equal portions, for ever, without deduction of any taxes whatsoever; the first payment to be made from the twenty-ninth day of *September* next; and the said farm, called *Day Farm*, to stand charged with the said rent or annual sum to the defendant *Wyle* and his successors, to be paid as aforesaid; and the said agreement to be mutually performed by the parties on both sides, their respective heirs and successors, in all times to come. And this Court doth declare, that this shall be without prejudice to the defendant, his grace the lord archbishop of *York* and his successors, as to any tithes due and belonging to the said defendant and his successors in right of the rectory of *Crawind*.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

WITHERINGTON

WITHERINGTON *against* HARRIS.MICH. TERM,
3. Q. ANNE.*Essex, 5th December 1704.*

THE bill stated, that the plaintiff, for five years past, had been lessee and farmer of the great tithes, and particularly of hay and wood, arising within the parish and parsonage impropriate of *Thorpe*, in the county of *Essex*, which he took by indenture, for a term of years, from the owner of the said impropriate parsonage, by virtue whereof he was entitled to the said tithes; that the defendant, for two years past, had been occupier of several lands therein, whereon he had wheat by him sowed and cut, and also hay and clover grass, which he cut and sold, without setting out the tithes thereof.

The impropriator of *Thorpe*, in *Essex*, claims tithes of wheat, clover grass, and wood.

The defendant confessed the plaintiff to be farmer, and that in the year 1701 he had cut clover grass twice, and set out the tithes of both the first and second crop in swathes, according to the custom used in the said parish; that in the said year he cut six acres of grass, three acres of which he set out in grass cocks, which the plaintiff accepted, and the other three in swathes; and in that year he had wheat, the tithe of which being duly set out, the plaintiff accepted. He confessed, that in 1702 he mowed a second crop of the clover grass, but did not set out the tithes thereof, insisting, that no tithe was due, or ever had been paid, for the second crop of clover grass. He also confessed, that in the said years he had cut and sold two loads of firewood, being the loppings of *Old Bowlings*, for which, he insisted, no tithes were due.

The defendant says, that he set out the tithes of the first crop of clover in swathes; that no tithes are due for the second crop, nor for the firewood sold, it being the loppings of *Old Bowlings*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs taken in the cause,

THE COURT disallowed the custom insisted upon by the defendant in his answer for setting out his tithes in swathes, and ordered the defendant to account for and satisfy the plaintiff the value of the tithes of his first and second crop of clover grass, and of his other grass, and for his wheat, and for the wood by him cut and sold for which no tithes had been paid.

The setting out the clover in swathes disallowed; and the tithes of the second crop, and of the wood, decreed to be paid.

THE

MICH. TERM, THE ARCHBISHOP OF YORK *against* THE DUKE OF
3. Q. ANNE. NEWCASTLE.

Yorkshire, 9th November 1704.

The rector of *Kilburne*, in the county of *York*, claims tithes in kind of *Rowlands*, *Bosomworth's*, *Maynard's*, and *Lee's* farms.

S. C. 2. Salk.

656.

S. C. Rayn. 99,
100.

THE bill stated, that the *Archbishop of York* was seised in fee, in right of the archbishopric of *York*, of and in the rectory and parsonage of *Kilburne*, in the county of *York*, and of all tithes, great and small, yearly renewing within the parsonage of *Kilburne* and titheable places thereof; that *R. Sterne*, doctor in divinity, deceased, being, in the year 1670, *Archbishop of York*, and seised in fee of the said rectory and the tithes, by lease, dated the thirtieth of *September*, in the twenty-second year of *Charles the Second*, demised the same to *C. Barnes*, the plaintiff *Barnes'* brother, since deceased, for three lives; by virtue whereof the said *C. Barnes* was proprietor thereof under the said *Archbishop of York*; that *Lord Hollis*, since deceased, being then also seised in fee of several lands and farms within the said parish, then in the occupation of several tenants, who refused to pay tithes in kind to the said *C. Barnes*, he sued them in the ecclesiastical court of *York*; that the said tenants, to stay proceedings, set forth some *modus* in lieu of tithes, and thereupon obtained prohibitions; but they not being proved within the time limited by the statute, the said *Barnes* obtained costs against them; that the said tenants, about the twenty-sixth and twenty-seventh years of *Charles the Second*, exhibited their bill in this court, to which *Lord Hollis* was made a party plaintiff, against the said *C. Barnes*, setting forth, that the said *Lord Hollis* was seised in fee of the late dissolved monastery of *Bella Landa*, otherwise *Byland*, in the said county; that the lands held by his tenants were parcel of the possessions thereof; that there had been several immemorial payments in lieu of tithes in kind; and that they held the same, so discharged of tithes, at the time of the dissolution of the said monastery (a); that the said *C. Barnes* put in his answer, and denied the several *moduses* and prescriptions; and the cause being at issue, and witnesses examined, it came on to a hearing on the twenty-eighth of *June* 1678, when a trial at law was directed upon the several issues following: FIRST, Whether *Rowland's Farm* paid eight fleeces of wool and four shillings in lieu of tithes; for the proof was different from what had been alledged in the bill, viz. eighteen shillings in money only. SECONDLY, Whether *Bosomworth Farm* paid ten fleeces of wool and two lambs and a half; which was also different from the bill, which alledged one shilling and sixpence in money. THIRDLY, Whether *Maynard's Farm* paid one

(a) *Viz.* *Rowland*, eighteen shillings; sixpence; *Maynard*, one shilling and sixpence; and *Lee* in a *non decimando*, lambs and a half, and one shilling and

Shilling and fivepence, in lieu of all tithes ? But that neither the said Lord Hollis, nor his tenants, did ever try the said issues, nor could ever prove any *modus* by them insisted on (a) ; that the said Lord Hollis died seised of the said lands, and the same came to F. Lord Hollis, upon whose death part of the same descended to the defendant the Duke of Newcastle, and the rest vested in the defendants the Earl of Chesterfield, J. Hales, and P. Le Neve ; that the said C. Barnes, by will, dated the sixteenth of March 1694, devised the rectory and tithes to the plaintiff W. Baines during the three lives in the said lease mentioned ; and that the said three persons are all living ; that the plaintiff Barnes being thereby seised of the said rectory and tithes, about the seventeenth of October 1695, surrendered the same to the plaintiff, the Archbishop of York, who, by indenture dated the same day, demised the same to the plaintiff Barnes for three lives ; and that being entitled to the said tithes, he ought to receive the same in kind ; that the defendants Scaife and several others were occupiers of land within the said parish of Kilburne, and some of them possessed of the four old farms, viz. Rowland's, Bosomworth's, Maynard's, and Lee's ; and that all of them had tithes, both great and small, since the plaintiff Barnes had been farmer ; but that they refused to pay such tithes, or to make any satisfaction for the same.

THE ARCH-
BISHOP OF
YORK
against
THE DUKE OF
NEWCASTLE.

(a) On the 8th June 1676, Trinity Term, 28. Car. 2. Lord Hollis, as tenant in fee simple of the scite of Ryland Abbey ; John Rowland, as tenant of Oldstead Farm ; K. Bosomworth, as tenant of Great Camb ; and Maynard, as tenant of certain lands in Oldstead ; filed their bill in this court against Barnes, the rector of Kilburne, to establish a *modus* of eighteen shillings a-year, payable at Michaelmas, in lieu of all tithes of Oldstead Farm ; and ten fleeces of wool and two lambs and a half at Midsummer, and one shilling and sixpence in money, in lieu of tithes of Great Camb ; and one shilling and fivepence a-year, in lieu of tithes of Maynard's Farm. The defendant denied the existence of the *moduses* ; stated his title under the Archbishop of York ; and admitted that he had cited the plaintiffs to the ecclesiastical court, and libelled against them there for not setting forth their tithes. And on reading the depositions, it not appearing that there are any such prescriptions for discharging the said messuages, lands, and tenements, the court of exchequer dismissed the bill as against the plaintiffs Rowland, May-

nard, and Bosomworth. But as to such part of it as concerned Lord Hollis and his lessee the plaintiff Lee, an issue was directed to try, whether the messuage and lands in Lee's possession are discharged from the payment of tithes ; but no trial appears to have been had. On the 18th of June 1678, Trinity Term, 30. Car. 2. the said plaintiff filed another bill against Barnes, insisting on a *modus* of eight fleeces of wool and four shillings in money for Rowland's Farm ; ten fleeces of wool and two lambs and a half for Bosomworth's Farm ; and one shilling and fivepence for Maynard's Farm. The rector said, that he believed that ten fleeces of wool and two lambs and a half had been, for many years last past, paid for Bosomworth's Farm, in lieu of the tithes of wool and lamb only, and denied any other prescription or *modus* in lieu of tithes. Three issues were directed to try the three several *moduses*, as stated in the bill, with respect to Rowland's, Maynard's, and Bosomworth's farms. But it does not appear by the exchequer books that any further proceeding was had on the bill.

The

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The defendant insists the said farms are tithe free, as having been parcel of the possessions of *Byland Abbey*.

The *Duke of Newcastle*, the *Earl of Chesterfield*, and the other defendants *Hales* and *Le Neve*, admitted *Barnes's* title to the rectory and tithes; and after severally setting forth their respective titles to the scite of the dissolved monastery of *Byland*, insisted, that the said lands and farms were parcel of *Byland Abbey*; that the abbot, at the time of the dissolution of the said abbey, held the same discharged from the payment of tithes; that the said monastery was afterwards vested in THE CROWN, and therefore discharged from the payment of tithes by virtue thereof, or by virtue of some *modus*, of which they claimed the benefit.

That the farm called *Great Camb* pays ten fleeces of sheep and two and a half lambs, or 18d. in lieu of tithes.

The defendants *Forster* and *Salmon* said, that they had been tenants of two messuages and several lands in the said parish; and that both the said farms were called *Great Camb*, otherwise *East Camb*, and had formerly been one entire farm; that they ought not, for the reason assigned by the other defendants, to pay any tithes; and that they, and all those whose estates they had, had immemorially paid to the rector or impropriator of the said parish, ten fleeces of wool and two and a half lambs, or eighteenpence in money in lieu of the half lamb, at *Midsummer*, when demanded, in full discharge of all tithes whatsoever.

That *Cawkerdale* and *Raper's* farms pay six fleeces of wool and three of lamb.

and no tithes of corn or hay, as having been parcel of the said monastery.

The defendants *Day* and *Forster*, as tenants of the farms formerly called *Cawkerdale's Farm* and *Raper's Farm*, insisted, that they were not liable to pay any tithes of corn, grain, and hay, or any thing in lieu thereof, or any small tithes, except six fleeces of wool and three lambs as a *modus* for all small tithes whatsoever, for that the late abbot of the monastery of *Byland*, and his predecessors abbots thereof, had been immemorially seised in fee of the said farms, in right of the said monastery, and held the same discharged from the payment of any tithes of corn, grain, and hay; that the said abbot, and all his predecessors, abbots of the said monastery, had also, time out of mind, rendered and yearly paid, on the twenty-fifth of *June*, to the rector of *Kilburne*, six fleeces of wool and three lambs, in discharge of all small tithes whatsoever upon the said farms and lands; and that the said abbot held the same so discharged at the time of the surrender and dissolution of the said monastery; that the monastery was one of the greater abbeys, and, with the lands thereunto belonging, came to and was vested in THE CROWN; and that *King Henry the Eighth*, by virtue of the statute 31. *Hen. 8. c. 12.* became seised thereof, and that the said farms in the defendant's possession, as belonging to the same, are not only discharged from all tithes of corn, grain, and hay, but also from all small tithes in kind, or any thing in lieu thereof; the yearly payment of the said six fleeces of wool and three lambs only excepted.

The

The defendants *Wood, Lee, and Rowland*, as tenants of a farm formerly occupied by the defendant *Rowland*, insisted, that the plaintiff ought not to have any tithes, either great or small; for that the defendant the *Duke of Newcastle*, and others, were seised in fee of the said farm and lands, and that they, and all those whose estates they had therein, had, time out of mind of man, yearly paid to the rector eight fleeces of wool and four shillings in money, about the twenty-fifth of *June*, in discharge of all tithes whatsoever for the said farm and lands.

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That *Rowland's* Farm pays eight fleeces of wool, and 4s. in money.

The defendants *Clarke and Webster*, as tenants of a farm called *the Isle of Marr*, insisted also, that they ought not to pay any tithes whatsoever, either great or small, as the said farm had belonged to the monastery of *Byland*, and was discharged from the payment of tithes by the statute 31. *Hen. 8. c. 12.*

That the *Isle of Marr* was parcel of the monastery of *Byland*, and tithes free;

The defendant *Barton*, as farmer of a messuage and several closes of ground in *Newstead* within the said rectory, insisted also upon the like prescription in a *non decimando*, in discharge of payment of all tithes for the said farm.

and that *Newstead*, by the like prescription, was tithes free.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the thirteenth of *May* last; and upon reading the depositions, and hearing counsel, the Court ordered a case to be made, and stated by the counsel on both sides, with which THE BARONS were to be attended, and counsel to be heard on both sides. In pursuance of which order a case was made as to three of the farms, viz. the farm called *Great Camb* and *East Camb*; the farm called *Cawkerdale* and *Raper's Farm*; and the farm called *Rowland's*; in which, FIRST, The defendant *Foster* insisted on a *modus* of ten fleeces of wool, two lambs and a half, or one shilling and fixpence for the half lamb, at *Midsummer*, or afterwards upon demand, in lieu of all tithes for the said farm formerly in *Bosomworth's* possession, and called *Great Camb* and *East Camb*. SECONDLY, The defendants *Wood, Lee, and Rowland*, insisted upon a *modus* of eight fleeces of wool and four shillings in money, at or about the twenty-fifth of *June* yearly, in lieu of all tithes for the farm called *Rowland's Farm*.

A case is settled for the opinion of the Barons, respecting *Great Camb, Cawkerdale, and Rowland's*, in which the question was, whether a *modus* of ten fleeces of wool, &c. be good.

THE BARONS were accordingly attended, and counsel on both sides were severally heard thereupon; and the cause stood this day in the paper for THE BARONS to deliver their opinions (a).

The Barons divided in their opinions.

(a) It appears by the report of this case, 2. Saik. 655. that PRICE and BURY, Barons, were of opinion, that a *modus* to pay ten fleeces of wool and two lambs, in lieu of all tithes, is a bad *modus*, because it is one species of tithe for another, and also because it is uncer-

tain, for that one fleece may be twice as big and three times the value of another. But WARD, Chief Baron, and SMITH, Baron, held it to be a good *modus*; because, by S. C. Rayner, 100. it is not in discharge of wool and lamb only, but of all tithes.

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THE DUKE OF
NEWCASTLE.

BUT THE COURT, upon hearing counsel on both sides, ordered a trial at law between the parties touching the said *moduses* in five issues; the plaintiffs in equity to be plaintiffs at law.

Five issues are directed to try

the *moduses* as
to *Great Camb.*

FIRST, Whether the owners or occupiers of *Bosonsworth's Farm*, called *Great Camb* and *East Camb*, in the possession of the defendant *J. Foster*, have, time out of mind, paid, or ought to pay, to the owners of the rectory of *Kilburne*, a *modus* of ten fleeces of wool and two lambs and a half, or one shilling and sixpence, in lieu of the half lamb, yearly, for and in lieu of all tithes arising or happening on the said farm.

The *modus* as to
Cawkerdale.

SECONDLY, Whether the farm called *Cawkerdale* and *Raper's Farm*, in the possession of the defendants *Day* and *Forster*, was parcel of the monastery of *Byland*, in the county of *York*, at the dissolution thereof, and by virtue thereof discharged of and from the payment of all great tithes, or anything in lieu thereof? and, Whether the owners or occupiers of the said farm have, time out of mind, paid, or ought to pay to the owners of the rectory of *Kilburne*, a *modus* of six fleeces of wool and three lambs yearly, for and in lieu of all small tithes whatsoever arising or happening upon the said farm.

The *modus* as to
Rowland's.

THIRDLY, Whether the owners or occupiers of the farm called *Rowland's Farm* ought to pay, &c. eight fleeces of wool and four shillings in money yearly, in lieu of all tithes, &c.

The prescrip-
tion as to *Isle of*
Marr

FOURTHLY, Whether the farm called *the Isle of Marr*, formerly *Lee's Farm*, was parcel of the possessions of the said monastery of *Byland* at the dissolution thereof, and is thereby discharged of and from the payment of all tithes arising, &c. on the said farm.

and *Newstead.*

FIFTHLY, Like issue as to the farm called *Newstead Farm*.

A verdict found
for the plaintiff,
but a new trial
granted.

The issues were tried, and a verdict found in favour of the *Archbishop of York*. But on the tenth of *December 1705*, when the cause came on upon the equity reserved, the defendant's counsel moved for a new trial, and the Court ordered a new trial to be accordingly had at the next ensuing assizes upon the former issues, on the defendant paying the costs of the former trial. But it does not appear from the books of the court that any further proceedings were had between the parties.

BURNAFORD

BURNAPORD *against* TORRET and Others.HILARY TERM
3. Q. ANNE.*Devonshire, 26th February 1704.*

THE plaintiff, as rector of the parish church and rectory of *Lydford*, in the county of *Devon*, stated, that for two years past he had been rector of the said parish, and was entitled to all the tithes and profits belonging thereto, within the limits and precincts thereof; that within the said rectory there hath been immemorially a great forest or waste called the *Forest of Dartmore*; that the rectors of the said rectory and parish, time out of mind, of *common right*, or by ancient grant from THE CROWN, or by other lawful ways and means, have been entitled to have and receive all manner of tithes renewing within the said parish, and particularly within and upon the *Forest of Dartmore*, and all predial and other tithes renewing within the said forest, parish, and the titheable places thereof; that the defendants from *Lady Day* 1702, to *Michaelmas* then last past, occupied several messuages and tenements, with arable, meadow, and pasture ground therein, and in right of such, or as owners or occupiers of the same, and of the lands and tenements adjoining to or in the said forest, being within the said rectory, did each of them keep and depasture in and upon the said forest and other commons a number of milch cows and sheep, from which they had milk, calves, and wool, and also kept other sheep upon the wastes and titheable places thereof, which they sold off before they were shorn; for the herbage and pasturage whereof they ought to have paid tithes to the plaintiff; that the said defendants had also cut and inned corn and grain, and had several other titheable matters and things, for which they ought to have paid tithes to the plaintiff.

The rector of *Lydford*, in *Devonshire*, claims tithes in kind for cattle fed and depastured, and for corn and other grain cut and inned from the *Forest of Dartmore*.

The defendants said, that neither the plaintiff nor his predecessors, rectors, were entitled to or ought to receive the tithes of lamb or wool of any sheep depastured in the said forest, or for depasturing any other sheep or cattle therein, or any other titheable matters or things, or any composition or money for tithes, other than three pounds a-year, for that the whole *Forest of Dartmore* is part of the ancient revenue and inheritance of THE CROWN, and hath been annexed to, and is parcel of the *Duchy of Cornwall*; that there are thirty-five ancient tenements in the said forest, having ancient houses upon them, and several parcels of waste ground inclosed, to the same belonging; that, as appears by ancient deeds and according to the ancient use and custom, her majesty's tenants of the said forest, and the heirs of each tenant upon the death of each tenant, and also of every purchaser of inheritance of any such tenement, have, by the custom, a liberty to inclose eight acres of the said waste or forest, as of right belonging to each of the said tenements, so de-

The defendants deny the plaintiff's right to tithes in kind, and insist on a *modus* of 3*l.* a-year; and they state, that the *Forest* is parcel of the *Duchy of Cornwall*, that there are thirty-five ancient tenements, the tenants of which pay an annual sum to the *Prince of Wales*, in lieu of tithes;

BURNAPORNS
against
TORRENT
AND OTHERS.

and that they
are not within
the parish of
Lydford, but
within the pa-
rish of *Whitcomb*;

that there are
threedescriptions
of persons, viz.
Foreſtmen, *Ven-*
willmen, and *For-*
reigners, within
the precincts and
vicinities of the
ſaid foreſt, and
that the twoſt
have the liberty
of depaſturing
cattle thereon
tithe free.

ſcended or purchaſed, paying one ſhilling yearly to her majeſty, her heirs and ſucceſſors, which eight acres are commonly called *the new take*, and is actually confirmed to ſuch heir or purchaſer, their heirs or aſſigns, by copy of court roll of her majeſty's caſtle court of *Lydford*; that the owners and occupiers of the ſaid thirty-five ancient tenements do pay ſeverally rents to the crown, when there is no PRINCE OF WALES, and when there is a PRINCE OF WALES to him, amounting in all to nine pounds, fifteen ſhillings, and one penny, beſides the rents of *the new takes*, whereof there are thirty incloſed, which are thirty ſhillings; that the tenants of the ſaid thirty-five ancient tenements yearly do and perform certain ſervices, as ſet forth in the answers, according to cuſtom, in reſpect of their ſaid tenements; that the ſaid tenements lie fifteen miles diſtant from *Lydford*, and by reaſon of the length of the way, and of ſnow mires, and floods, they could not repair to *Lydford* church, nor ever did, and that the ſaid thirty-five tenements are either extra-parochial, or within the pariſh of *Whitcomb*; for that, time out of mind, the occupiers of the ſaid thirty-five tenements, and of the incloſed *new takes*, have conſtantly repaired to *Whitcomb* church, not above five miles diſtant from moſt of them, where they marry, baptize, and bury, and do all parochial offices of conſtables, churchwardens, and overſeers of the poor, and pay all taxes to her majeſty as pariſhioners of *Whitcomb*, and pay their tithe lambs, *Eaſter* dues, and offerings to the rector or vicar of *Whitcomb*, which had been done, during their remembrance, for thirty years paſt, and hope to prove it to have been time out of mind; that the owners of the ſaid thirty-five tenements, were conſtantly written and acknowledged to be within the pariſh of *Whitcomb*, and ſummoned before the juſtices and commiſſioners of the diviſion wherein *Whitcomb* lies, and not in the diviſion of *Lydford*, for making all public rates and taxes, and other parochial buſineſs; that there are three ſorts of people who have right to depaſture their ſaid cattle within the ſaid *Foreſt of Dartmore*, that is to ſay, FIRST, *Foreſtmen*, who are owners and occupiers of the ſaid thirty-five tenements, who are the queen's immediate tenants, and pay the ſaid yearly rents, and do all ſuits and ſervices, and in reſpect thereof are freed by the kings and queens, or by the prince of Wales, for the time being, of all tithes and duties pretended to be due and payable, for or in reſpect of the ſaid thirty-five tenements, and *new takes*, by the rector of *Lydford*, or his predeceſſors, rectors of the ſaid pariſh; and that the ſaid kings, queens, and prince of Wales, or their auditors, or receivers of the revenues of the ſaid foreſt, have conſtantly paid to the rectors of *Lydford*, for the time being, at *Michaelmas*, three pounds, in lieu and diſcharge of all manner of tithes due or payable to the ſaid rectors, and which they had received in full ſatisfaction, not only for the tithes of the thirty-five tenements and *new takes*, but alſo for the tithes of cattle, and other matters and things due

due and payable for tithes in the said *Forest of Dartmore*. That THE SECOND sort of people who have a right to depasture in the said forest or waste, are called *Venvillmen*, who are inhabitants within the purlieus and other precincts adjacent to the said forest and waste, and pay to her majesty's receiver, as farmer, threepence, called *Venvill Rent*, and threepence a-year, called *Night Rest*, which was all that is to be paid by any *Venvillman*, or inhabitant within the purlieus of the said forest, for depasturing cattle therein, be their number what it will. That THE THIRD sort of people usually depasturing cattle in the said forest, are called *Foreigners*, who dwell in parishes and places farther remote from the said forest, who do each of them pay for depasturing their cattle in the said forest, the rates or price commonly called *the Princes Price*, viz. twopence yearly for a horse; three halfpence for a bullock; and sevenpence halfpenny for every score of sheep depastured there; that no *Forestman*, *Venvillman*, or *Foreigner*, depasturing cattle in the said forest, ought to pay any thing in lieu or satisfaction of any manner of tithes whatsoever, for depasturing cattle upon the said thirty-five tenements or *new takes*, or for wool, lamb, corn, grafs, hay, or any other thing arising within the said forest, or in the purlieus, or precincts thereof, to the rector of *Lydford*, for the time being; and they insisted that the said three pounds a-year is in lieu and satisfaction of all tithes arising within the said forest and the precincts thereof; and set forth what tenements they held within the said *Forest of Dartmore*, and parish of *Lydford*, the yearly value, and the titheable matters they had thereon.

BURNAPOND
against
TORRET
AND OTHERS,

and that the
others are to pay
3l. a-year.

The defendants *Ford* and *Webber*, said, that they are *Venvillmen*, living in the parish of *Holme*, adjoining to the *Forest of Dartmore*, and within the purlieus thereof, and that they had depastured on the said forest, a number of sheep, from which they had several fleeces of wool.

Two of the de-
fendants say they
are *Venvillmen*.

The defendants said, that about twelve years ago, *D. Birchinsbaw*, the plaintiff's predecessor, filed his bill in this court (a) against several of the then owners and possessors of the said thirty-five tenements for non-payment of tithes, and the said thirty *new takes*, who in their answers insisted on the matters aforesaid, and on the hearing of the cause the court referred it to a trial at law, upon two issues, First, whether the then defendant's tenement did lie in the parish of *Lydford*, or the titheable places thereof; Secondly, whether the said three pounds a-year were paid in discharge of all tithes, for and in respect of the same; that the defendants did try it on the first issue, and the plaintiff obtained a verdict against the defendants, whereupon they paid the tithes then sued for; that the said *Birchinsbaw*, hearing that the defendants would rehear the cause in parliament, or by bill of review, surrendered the rectory to the plaintiff in the year 1702; that after the decree *Birchinsbaw* did

The defendants
state a former
suit in this court.

(a) See *Birchinsbaw v. Wilcock*, ante, page 287.

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prosecute another suit in this court, against *Parsons* and others, for the tithes of depasturing cattle, and of wool and lamb fallen within the said forest, who insisted that they were *Venvillmen*, and lived within the purlieus, and paid the duties and customs aforesaid, belonging to *Venvillmen*, and having proved the same, upon a commission for examining witnesses, he dismissed his bill, and paid the defendant's costs; and they concluded by saying, that they hoped to prove that they ought to pay no tithes, not being within the parish of *Lydford* aforesaid.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

The question.

The cause came on to be heard on the thirteenth instant, when it was insisted upon by the defendant's counsel, that the lands held by the defendants, out of which the plaintiff demands tithes, do not lie within the parish of *Lydford*, and that if they were within the said parish, yet there is a *modus* of three pounds *per annum*, yearly paid to the rector of *Lydford*, in lieu of all tithes arising upon the *Forest of Dartmore*, and that the defendants *Ford* and *Webber*, as *Venvillmen*, are not liable to pay tithes to the plaintiff.

The evidence.

Upon debating the matter, and reading the depositions of divers witnesses, examined on behalf of the defendants, and several ancient records and accounts of ministers, and officers of the revenue of the *Duchy of Cornwall*, remaining in the auditor's office of the said duchy, touching the payment of three pounds a-year to the rector of *Lydford*, for the tithes of agistments within the said *Forest of Dartmore*, one of them being in the second year of *Richard the Third*, and the other in the fifth year of *Henry the Seventh*, and another in the twentieth year of the same king; and an order made the eleventh of *February*, the fifth year of *Charles the First*, in a cause of *French v. Barber*, then rector of *Lydford*; and an entry in a book remaining in the surveyor's office of the said duchy, dated the nineteenth of *February* 1613, and an indenture of lease, dated the nineteenth of *June*, in the seventeenth year of *James the First*, made by the then *Prince of Wales* to *Richard Harbyn*; and a copy of a grant made the twenty-first year of *Henry the Third*, to the then rector of *Lydford*, of tithes of the herbage of the *Forest of Dartmore*; and a copy of the settlement made by *Walter*, the lord bishop of *Exeter*, in 1260, upon the application of the parishioners of *Lydford*, by the consent of the patrons and parsons of *Lydford* and *Whitcomb*, taken out of a register book of the bishop of *Exeter*; and several records of accounts of ministers, and officers of the revenue of the *Duchy of Cornwall*, in the twelfth, sixteenth, seventeenth, and nineteenth years of *Henry the Eighth*, and the fifth, fifteenth, sixteenth, and twenty-eighth years of *Elizabeth*; and several acquittances under the

the hand of *Richard Pote*, clerk, heretofore rector of *Lydford*; and several depositions in a cause of *Birchinslaw v. Townsend*, in this court; also on reading depositions taken in the reign of *Charles the First*, in the cause of *French v. Barber*, a copy of a record of a trial had in an action brought by *Pole v. Crossman* for tithes arising upon a tenement possessed by him in the said *Forest of Dartmore*, whereupon a verdict was found for the plaintiff; and upon reading several proofs for the defendants, and upon consideration of what was insisted upon by the counsel,

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THE COURT declared the plaintiff ought to be relieved in this case.

IT IS THEREUPON ORDERED AND DECREED by the Court, that the said several defendants shall account with and satisfy the plaintiff for the tithes of the several titheable matters and things which they had renewing and arising upon the tenements and lands which they held and occupied within the *Forest of Dartmore*, and parish of *Lydford*, or which the said defendants, or any of them had otherwise arising, &c. in and upon the said forest, except only for tithe lamb, payable to the vicar of *Whitcomb*, pursuant to the award of *Walter*, bishop of *Exeter*, and the tithe of herbage for the forest, and barren cattle fed on the forest, for which the said sum of three pounds *per annum*, is payable to the plaintiff out of the high rents of *Lydford*; and it is referred to the deputy remembrancer to take and report the said account.

The payment of the said 3l. a-year for feeding barren cattle on the said forest decreed.

In pursuance of the above decree, the deputy remembrancer made his report, dated the twenty-eighth of *May* last; and upon reading the decree and the report, without exceptions, and no counsel attending for the defendants, it is ordered by the Court, that the said report be ratified and confirmed, and that the several defendants shall forthwith pay to the plaintiff, the several sums reported due from them to the plaintiff, for their tithes, according to their answer, amounting in the whole to six pounds, sixteen shillings, and sixpence.

EDW. WARD.
THO. BURY.
ROB. PRICE.
J. SMITH.

THE ATTORNEY GENERAL against BREWSTER
and Others.

EASTER TERM,
4 Q. ANNE.

London and Middlesex, 3d May 1705.

THE attorney general, as well on behalf of her majesty, as also for and on behalf of *J. Wells*, clerk, master of arts, and curate or chaplain of the parish church of *Saint Botolph*

The curacy of the church of *St. Botolph's, Aldgate*, in *London*, is in the parish.

the appointment of the rector of
without

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without Aldgate, in the city of *London*, filed his bill, setting forth, that *R. Hollingworth, D. D.* having a grant or nomination under THE GREAT SEAL OF ENGLAND, from *Charles the Second*, of the chaplainship or curacy of *Saint Botolph, Aldgate*, did, by virtue thereof, possess and execute the same, and, about the sixteenth of *January 1700*, duly resigned his said grant, by deed, duly inrolled, into the hands of *William the Third*; that *William the Third*, by his letters patent, dated the twenty-second of *January 1700*, granted the same to *William Savage*, bachelor in divinity, who was put into possession of the desk and pulpit of the said church, by the churchwardens of the said parish; that the said *William Savage*, by deed duly inrolled, dated the seventh of *January*, in the first year of *Queen Anne*, resigned the said grant or nomination to her majesty, who, by letters patent, bearing date the thirteenth of the said month, granted the same to the relator for life, with all stipends, salaries, and perquisites thereto belonging; that he thereupon obtained a license from the bishop of *London*, to perform divine offices in the said church; that her majesty and her royal ancestors, kings and queens, have ever since the dissolution of monasteries (the said church formerly belonging to the priory of *Christ Church in London*), constantly nominated and appointed the curate or chaplain of the said church and parish; that *Sarah* and *Elizabeth* are the heirs at law to *Sir C. Umfreville*, deceased, who was owner of the said rectory; that the said rectory is descended to them in fee, or else he hath made some settlement or conveyance in trust for them or one of them; that the defendants, together with *William Kennet, D. D.* did by confederacy seek to defeat the crown of its right to the said curacy, and did refuse to let the relator perform divine service in the said church, pretending that the said *Kennet* was nominated and appointed to be curate of the said parish by them, and that they have a right to put in and displace the said curate at their will, and also, that the said *Umfreville*, in his lifetime, had, or the confederates since his death have, obtained some judgment in ejectment for one messuage, and would extend the same to the said church of *Aldgate*, and have taken out execution thereon, all which they justify under colour of certain letters patent of *James the First*, dated the twenty-fifth of *May*, in the seventh year of his reign, whereby the said rectory and impropriation of *Saint Botolph without Aldgate*, is, amongst other things, granted to *F. Morris* and *F. Phillips*, under whom the defendants claim, whereas in the said letters patent, there is excepted and reserved to his late majesty the donation, fee, disposition, and right of patronage of the said church, and all the churches, vicarages, and chapels, and other ecclesiastical benefices whatsoever, in the said letters patent contained, or belonging, or incident to the same; that in the said letters patent the pension or salary of eight pounds a-year, is expressly reserved to the curate, and forty

shillings for bread and wine, which the patentees covenant for them and their heirs to pay. The bill therefore prayed, that her majesty's title might be decreed, and the relator quieted in his possession under her majesty, and might have the said stipend or salary decreed and settled.

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The defendants *Brewster* and *Sarah* his wife, by their answer, said, that *Doctor Hollingworth*, pretending to have a grant of curacy from *Charles the Second*, might enjoy the salary of eight pounds a-year, but that it was without any right, and that he was legally evicted and removed from the said cure, by due course and judgment of law, and might afterwards resign the same; that the said *William Savage*, did also pretend to have obtained letters patent for the said curacy, but did never officiate in the said church; and that they the said *Brewsters* did nominate and appoint *Dr. Kennett* to be curate of the church; and that the nomination and appointment of the curate of the said church, was not excepted in the said letters patent to *Morris* and *Phillips*, but belongs to the rector or owner of the rectory inappropriate, for the time being; and that if any person had intruded into the said church without consent of the rector or impropriator, such person was an intruder and usurper.

The defendant *Elizabeth Michell* said, that she claimed no title to the said rectory or to the appointing of a curate of the said church.

The defendant *W. Kennett* set forth, that he was curate or chaplain of the said church under the defendant *Brewster*, who nominated and appointed him to serve the said cure, and that under such nomination he conceived he had a right to perform divine offices in the said church.

The attorney general replied; the defendants rejoined; and witnesses were examined on both sides.

The cause came on to be heard the seventh, eighth, and ninth days of *December* last, and upon reading the letters patent, dated the twenty-seventh of *May*, in the seventeenth year of *James the First*, and a decree of this court, dated the twenty-ninth of *November* 1694, between *Hollingworth v. Umfreville*, Ante, page 332, and *Hollingworth's* surrender, dated the sixteenth of *January*, in the twelfth year of *William the Third*, of letters patent granted to him of the curacy or chaplainship of the said parish of *Saint Botolph without Aldgate*; also letters patent, dated the thirteenth of *January*, in the first year of *Queen Anne*, granted to the relator, of the curacy or chaplainship of the said parish, and reading several depositions taken on behalf of the relator, and a lease made under the great seal, dated the fourth of *February*, in the nineteenth year of *Queen Elizabeth*, made to *R. Hallywell*

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Hallywell, of the said rectory, and another lease, dated the eighth of *June*, in the thirtieth year of her reign, to *T. Pattenham* of the said rectory, a deed purporting to be a declaration of trust made by *Sir T. Raynall*, dated the fourteenth of *April* 1632, a lease made by *B. Gotts*, widow, to *W. Umfreville*, and *H. Hardcastle*, dated first of *April* 1647, a deed dated the twentieth of *February* 1655, made between the said *Raynall* and *Umfreville*, to *W. Cutler* and *J. Latham*, a deed made by *T. Gotts*, being a settlement of the said rectory upon the marriage of *Elizabeth* his daughter with *W. Umfreville*, dated the tenth of *August* 1631, a copy of a deed (entered in a book) from the said *Raynall* and others to *T. Chancey* and *J. Bittison*, dated the thirteenth of *April* 1632, being a lease of the said rectory, a writing signed by *B. Gotts*, widow, being a discharge of *Mr. Viner* from being curate of the said parish, and appointing *Mr. Gibson* to be curate there, also a writing under the said *W. Umfreville*, appointing *J. Crafton* to be curate of the said parish, and the said *W. Umfreville's* discharge of the said *J. Crafton*, and appointing *J. Makener* to be curate of the said parish, and upon reading several depositions taken on both sides,

It was insisted upon by the ATTORNEY GENERAL and the other counsel, that the said curacy was excepted out of the said grants; made to *Morris* and *Phillips*, by the exception in the grant, and that notwithstanding the said grants, the curacy remained in THE CROWN, and that her majesty had good right in law to appoint the relator to be curate of the said church, and that by virtue of the letters patent of her majesty, the relator had a good title thereto.

THE COUNSEL for the defendants insisted, that there was nothing in the exception which could extend or be construed to extend to except the curacy, but that *Morris* and *Phillips*, as rectors of the church, and all others claiming the rectory under the grant, had good right in law to appoint a curate there, and that the defendant *Dr. Kennett* was duly appointed curate there by the defendant *Brewster*,

The matter in law was argued; and after long debate THE COURT took some time to give their judgment; and the cause standing this day, the third of *May* 1705, in the paper for judgment;

THE COURT declared, that the relator had not any right to the said curacy by virtue of her majesty's letters patent, and that the appointment of a curate in the said parish, doth of right belong to the rector of the said rectory,

IT IS THEREUPON ORDERED AND ADJUDGED by the Court, that the defendants do go without day, as to the said bill and the matters and things therein contained, and of their further attendance

attendance in this court upon the same, and that the said re-
 lator *J. Wells* shall pay to the said defendants thirty pounds, for
 costs of this suit.

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against
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 AND OTHERS.

EDW. WARD.
 THO. BURT,
 RO. PRICE,
 J. SMITH.

STANSFELD *against* HOWARD.

EASTER TERM,
 4 Q. ANNE.

Nottinghamshire, 7th May 1705.

THE vicar of *Newark upon Trent*, in the county of *Nottingham*,
 claims all *small tithes* within the said parish, and a pension of
 ten pounds a year, free from all taxes, issuing out of the rectory
 or impropriation of the said parish, and the great tithes arising
 within the same, or by some augmentation or endowment of
 the said vicarage.

The vicar of
Newark upon
Trent is entitled
 to a pension of
 10l. a year from
 the rector.

The defendant said, that the plaintiff might be vicar, but
 knew not whether he ought to have any, or what *small tithes*,
 and confessed she had formerly paid to the plaintiff's prede-
 cessors the annual sum of ten pounds, and that as several acts
 of parliament did allow an abatement for taxes in cases of an-
 nuities, she had deducted taxes out of it, and that his prede-
 cessor had allowed the same. She also confessed that she had a
 deed of bargain and sale, dated the fifth of *February*, in the forty-
 second year of *Queen Elizabeth*, and inrolled in chancery,
 between *Henry Best* and another, and the *Countess of Rutland* and
 another, in which there is a covenant to pay the said stipend
 of ten pounds out of the rectory to the vicar yearly; that
 there were two years due, and that she was willing to pay the
 same, deducting taxes.

The plaintiff replied; the defendant rejoined; and upon
 hearing counsel, and reading the answers,

THE COURT declared they were of opinion, that the
 pension, or annual sum of ten pounds demanded by the plaintiff,
 is a charge upon the rectory of *Newark upon Trent* and the
 great tithes arising within the same; whereupon they decreed
 the payment of the same, and the two years arrears, without
 costs.

BISHOP *against* ARUNDELL.

Dorsetshire, 22d May 1703.

EASTER TERM,
 4 Q. ANNE.

THE bill stated, that the plaintiff, for nine years past, had
 been rector of *Tarrant Keynston*, in the county of *Dorset*,
 and entitled to all tithes arising therein, or to some *modus*, rate,
 of *Tarrant Keynston Farm*, and *Abley's Coppice* in kind.

The rector of
Tarrant Keynston,
 in *Dorsetshire*,
 claims the tithes
 S. C. Rayn. 98.

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or composition in lieu thereof; that the defendants, for two years past, had been inhabitants, owners, or occupiers of messuages, mills, farms, lands, and grounds therein, and had yearly, from their coppice and wood grounds, cut and felled great quantities of wood and underwood, which they made into bavins and faggots, and sold the same; and also had yearly corn and grain, which they cut and carried away, and kept several cattle, from which they had milk and calves, and had also sheep, from which they had wool and lambs, and had poultry, and many other titheable matters, for which they ought to have paid tithes, or some composition, but had refused the same.

The defendant says, that *Ash Leys* is no part of the farm, and that there is a *modus* of 26l. a-year payable to the rector in lieu of the tithes of the said farm.

The defendant *Arundell*, by his answer, said, that the plaintiff was rector of the said parish, and entitled as stated in the bill; that he, the defendant, was owner of *Tarrant Keynston Farm*, and of several lands thereto belonging, in the occupation of the other defendants his tenants; that he had no part of the said farm in his occupation during the said time, except two coppices and wood grounds, called *Ash Leys Coppice* and *Heath Coppice*; that *Ash Leys Coppice* is reputed to be no part of the said farm, but that *Heath Coppice* is; and he set forth the particulars of the wood cut upon the said coppices in 1701 and 1702, part of which he said was used in fencing, and the remainder sold, and that he had duly paid the plaintiff for the tithes thereof; that in the year 1703 no wood was cut; that, time beyond the memory of man, no tithes in kind had been paid for the said farm and lands, but that the defendant, and those whose estate he had, paid to the rector a *modus* of twenty-six pounds a-year in full discharge of all tithes for the said farm; that the defendant had, from time to time, paid the plaintiff, all the time he had been rector, the said *modus* of twenty-six pounds a-year, which he had accepted, in discharge of the said tithes, except for one year only, ending at *Michaelmas*, which the defendant had tendered to him before the filing of his bill, and now offers the same by his answer.

The other defendants admitted the plaintiff as rector, and set up the said *modus*, which they said they had tendered to pay their proportions of, and that no tithes in kind had ever been paid, and they set forth their titheable matters,

Issues directed to try the *modus*, and whether *Ash Leys* is part of the farm.

Two issues were directed to try,

FIRST, Whether there is, and, time-whereof the memory of man is not to the contrary, hath been, a *modus* of twenty-six pounds *per annum* payable to the rector of *Tarrant Keynston*, for the time being, by the owners and occupiers of *Tarrant Keynston Farm*, in satisfaction and discharge of all tithes arising upon the said farm, and the lands and grounds thereunto belonging.

SECONDLY,

SECONDLY, Whether the coppice and wood grounds in the said parish, called *Asb Ley's Coppice*, is part of the said farm, called *Tarrant Keynston Farm*?

BISHOP
against
ARUNDELL.

A trial was accordingly had upon the said issues, and the jury found the same for the defendants; but upon reading the said order and *possea*, a new trial was directed to be had upon the two following issues;

Verdict for the defendants, but a new trial directed to try

FIRST, What was the annual value, one year with another, of *Tarrant Keynston Farm*, now in question, at the time of exhibiting the plaintiffs bill against the defendants, and for the major part of sixty years before.

the value of the farm,

SECONDLY, Whether there is, and time whereof the memory of man is not to the contrary hath been, a *modus* of twenty-six pounds *per annum* payable to the rector of *Tarrant Keynston* for the time being by the owners and occupiers of *Tarrant Keynston Farm* in satisfaction and discharge of all tithes arising upon the said farm and the lands and grounds thereunto belonging.

and the existence of the *modus*.

To be tried by a special jury; and the defendants to have the costs of the last trial, taxed and paid before they proceed to trial.

A trial was accordingly had upon the last-mentioned issues, and the jury found both the said issues for the plaintiff, *viz.*

Verdicts for the plaintiff.

As to THE FIRST ISSUE, that the yearly value of *Tarrant Keynston Farm*, for sixty years before the filing of the plaintiff's bill in this court, was four hundred pounds a-year; that thirty years before filing such bill the same was three hundred and fifty pounds; and at the time of filing three hundred pounds *per annum*.

As to THE SECOND ISSUE, the jury found that there was no such *modus* of twenty-six pounds *per annum* payable in discharge of the tithes of *Tarrant Keynston Farm*, as by the defendants was pretended.

The defendant's counsel now alledging that the verdict was not to the satisfaction of the judge who tried the same, MR. BARON SMITH was desired to speak to him.

A new trial moved for, but refused.

Upon reading the order the twelfth of *November* last, and the return of the *possea*, whereby it appeared the verdicts were given as aforesaid, and upon hearing counsel on both sides, and it appearing to the court that the judge who tried the cause was not dissatisfied with the said verdict,

IT IS ORDERED BY THE COURT, that the several defendants shall account with, satisfy, and pay to the plaintiff for the tithes of the several titheable matters and things which they respectively had

Tithes in kind of the farm and the coppice decreed.

BISHOP
against,
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had renewing and arising on their respective tenements, lands, and grounds, and *the heath coppice*, which they respectively held and occupied within the said parish and rectory of *Tarrant Keynston* during the time in the bill charged.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

TRIN. TERM,
3. Q. ANNE.

BOWLES against LORD ARUNDELL; *et à Contra.*

Wiltshire, 14th July 1704.

The rector of *Dunhead*, in *Wiltshire*, is entitled to the tithes in kind of such part of *Red Deer Park* and *Fallow Deer Park* as lies within the parish of *Dunhead*.

THE bill stated, that the plaintiff, for eighteen years past, had been rector of *Dunhead Saint Andrew*, in the county of *Wilts*, whereby he became entitled to the tithes in kind of all woods and coppices, and of carp and other fish taken out of the defendant's ponds, and of all corn, grain, and seed growing on the lands and grounds in the defendant's occupation, called *Red Deer Park* and *Fallow Deer Park*, as being within the said parish.

The defendant confessed, that for three years past fifty acres of *Lawn Park*, part of the *Fallow Deer Park*, were ploughed and sown with oats; but he insisted, that as to that part of *Red Deer Park* and *Fallow Deer Park* which lies within the said parish, containing about three hundred and forty acres, tithes in kind are not payable, but a *modus* of three pounds and eight shillings a-year, in full satisfaction of and for all great and small tithes arising in and upon the same. And he said, that his father, in kindness to the plaintiff, did yearly give him the running of a horse in *Pond Close*, part of the *Red Deer Park*, and that he, since his father's death, had continued the same, not as a right, or in lieu of any tithes or composition, but as a kindness only.

The defendant filed a cross bill, with a view to perpetuate the testimony of his aged witnesses, and to establish the *modus* of three pounds eight shillings a-year.

The defendant *Bowles* appeared and answered.

On the hearing of the causes, the Court directed an issue to try, "Whether there be a *modus* of three pounds eight shillings, payable for all manner of tithes arising upon that part of *Red Deer Park* and *Fallow Deer Park* which lies within the parish of *Dunhead Saint Andrew*, or not;" and, on the trial, a verdict was given for the plaintiff.

THE COURT therefore ordered, that the defendant shall pay to the plaintiff his tithes in kind of oats, agistment, hay, wood cut and sold, calves, milk, *Easter* offerings, geese, and turkeys, according

according to the values thereof; the other articles for which he demanded tithes not being valued.

WARTERMAN *against* JONES and Others.

Berkshire, 8th June 1705.

BOWLES
against
LORD
ARUNDELL;
et c. Contra.
TRIN. TERM
4 Q. ANNE.

THE vicar, with the owners, occupiers, and tenants of lands within the rectory impropriate and parish of *Shinfield*, in the county of *Berks* and *Wilts*, on behalf of themselves and the rest of the inhabitants of the said parish, filed their bill against the defendants and the dean and chapter of *Hereford*, stating, FIRST, that, by an immemorial custom within the said parish, every inhabitant, exercising husbandry within the said parish, cutting and lopping any wood and trees, encreasing on any lands or tenements occupied by such inhabitant, together with an ancient house of husbandry for the fire bote of such inhabitant in the said house, therein to be burnt, or for necessary making or repairing the fences there about the grounds, and employing the same for the purposes aforesaid, by reason whereof a greater increase of tithe might come to the said rector, have, in all the times aforesaid, been, and of right ought to be discharged, from the tithe thereof; that the plaintiffs, some of them, are owners or occupiers of several ancient houses of husbandry, and of several coppices and other wood grounds thereto belonging, within the said parish, and within several years last past had cut several quantities of wood and trees, which were used for fire wood in their respective houses, or in the repairing and amending of the fences of the said lands belonging to such farms; SECONDLY, that there are several acres called *Lot Acres*, in *East Mead*, in the said parish, for which tithes in kind are due or payable, of which the plaintiffs, or some or one of them, are seised in fee simple; that the said impropriators and their predecessors, from time to time immemorial, have enjoyed a piece of meadow called *the Dole*, in *East Mead*, and every occupier of the said *Lot Acres*, for every acre, upon reasonable request made by the rector or farmer once in every year, ought to cut, for the said rector or farmer enjoying the said *Dole*, one swath of grass growing on the said *Dole* when ripe, in full satisfaction of all tithes growing upon such *Lot Acres*, which said *Dole* was still enjoyed by the proprietors of the said rectory, and the plaintiffs were always ready to cut a swath upon *the Dole* for the owner or farmer of the said rectory for every lot acre they so possessed, but were never required thereto, and have not been suffered by the owners of the said rectory to cut the same when they have tendered themselves thereto; THIRDLY, that the said plaintiffs, within seven years last past, have respectively cut within the said same and make it up into faggots, are entitled to be paid the tenth part of the ing up the tithe of such faggots.

The vicar of, and the owners of lands and tenements in the parish of *Shinfield*, in *Berkshire*, file their bill against the impropriator and his lessee to establish certain customs, stating, 1st. That *fire bote* is tithe free.

2d. That the owners of grounds called *the Lot Acres* are discharged from the tithe thereof by cutting yearly a swath of grass on land called *the Dole*, belonging to the impropriator.

3d. That the owners of woods, who cut the expence of binding

parish

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4th. That the owners of grafs lands have been discharged of the tithe of after-math, on making the tithe of the first crop into hay.

5th. The same custom as to clover grafs.

6th. That the vicarial glebe is tithe free.

parish and rectory several quantities of coppice wood and shawes, and made the same into faggots, hoops, bavins, hop poles, and hurdle rods, and set out the tithe duly; that in the said parish, for time immemorial, there is and hath been this custom, that when such coppice woods or shawes have been felled and made into faggots, hoops, bavins, hop poles, and hurdle rods, and the tenth duly set out, that then such tenant, occupier, or other person so cutting and setting out such tithe have been paid in money the full tenth part of the charge of making such faggots, &c. to the impropiator or farmer of the said rectory; **FOURTHLY**, that, time immemorial, there has been this custom and manner of tithing within the said parish and rectory; *viz.* that every occupier of any meadow, cutting or mowing the first math of his or their grafs at seasonable times, ought and have used at their own costs to tedd and spread abroad the grafs so cut and lying in swath, and afterwards to gather in winrows, and afterwards in grafs cocks of as just and equal quantity as could be made without fraud, and the same to place, one after the other as to number, and truly numbering the same, and every cock, that should happen to be the tenth, to assign and set out to the use of the rector or impropiator or farmer of the said rectory, and in consideration of the loading and spreading abroad, and making into winrows, and setting out the full and just tithe thereof, every such occupier have been exempt from payment of all other tithes of grafs and hay of the first math or cutting, and also of the tithe of the latter math of the same meadow the same year; **FIFTHLY**, that, by custom and usage of the said parish, every occupier of land sown with clover, within the said parish and titheable places thereof, from time immemorial, have used every year, at their own costs, to cut the first math of the same grafs at a seasonable time in the same year, and the clover grafs so cut at their like charge to make into hay, and so to make into cocks of an equal quantity without fraud, and every tenth so made to set out to the use of the rector or his farmer, and by reason thereof such occupier have been exempt from payment of all latter math or second cutting of such clover, grafs, or hay growing; that the plaintiffs are respectively owners of several parcels of meadow ground, and ground sowed with clover, within the said rectory, and at seasonable times cut several quantities of grafs and clover yearly, and at their own costs did tedd and spread abroad the said grafs so cut and lying in swath, and afterwards, at their own charge, gather the same into winrows, and afterwards put into cocks of equal bigness, and the tithes thereof duly set out, but by reason of the said custom ought not to pay any tithes of latter math; **SIXTHLY**, that during the time aforesaid there is and hath been in the said parish a vicar and vicarage endowed with small tithes and several lands within the said parish and rectory, and that the

the plaintiff *Oake* is vicar, and that he and his predecessors, from time immemorial, have enjoyed the said lands by themselves and tenants exempt from the payment of all tithes.—SEVENTHLY, that when the owners and occupiers of lands, pasture, and meadow within the said rectory, during the time aforesaid, have not had sufficient meadow and pasture for the milk kine and cattle that plough their lands, and that a greater increase of tithe corn, grain, and milk might come to the rector, farmer, and vicar by means of such cattle and kine, and in regard the said owners and occupiers have used to pay tithes of their ripe tares and vetches, the tenth cock, and for the tithes of clover or other grass, as aforesaid set forth, the said owners and occupiers of such lands have used to be discharged of the tithes of all such tares, vetches, clover, and other grass as they have cut green and unripe, and given for sustenance of such their cattle of the plough and milk kine; that the plaintiffs, or some of them, are respective owners or occupiers of lands whereon such tares, vetches, clover, and other grass have grown, and by them cut green and unripe, and given to their cattle of the plough and kine aforesaid, within ten years last past.—EIGHTHLY, that the defendants, pretending to be lessees or farmers of the said rectory impropriate, and of the great tithes aforesaid, and intending to set aside the customs aforesaid, pretend that there are no such customs and exemptions, and threaten to sue the plaintiffs for wood burnt and employed in fencing there, and for tithes of the aftermath of clover grass, and other grass, and green vetches, and of their respective *lot acres* aforesaid, and refuse to make any allowance for making of faggots, contrary to the said customs. The bill therefore prayed, that the defendants might set forth whether such exemptions have been used or not, and for how long time, upon what account, whether any tithes were ever paid of wood cut and spent for fuel, or of the aftermath of hay, vetches, or the clover cut green, or of the vicarage lands, and for which of them, and whether the value of the making of faggots have not been paid by the impropriator, and whether any, and what other satisfaction, by whom, to whom, and how often, and whether they, or some of them, do not enjoy *the Dole*, and whether the same be not enjoyed in satisfaction of the tithes of *the Lot Acres*, or some, and which of them, or what other satisfaction they have in lieu thereof, and whether the farmers and defendants have not refused to permit the said swarths to be cut, and when they were cut whether such *modus* or *modus*es of the said hay, grass, vetches, or clover, or some and which of them have not been used in the said parish, by whom, and how long, and that the defendants might answer the premises, and the plaintiffs be relieved therein.

WATERMAN
against
JONES
AND OTHERS.

7th. That tares, vetches, clover, and other artificial grasses, cut green and given to milch cows, are tithe free.

8th. That the defendant seeks to destroy the above customs.

And therefore the bill prays they may be established.

WATERMAN
against
JONES
AND OTHERS.
The defendants
say they are ig-
norant of the
existence of the
said customs.

The defendant *Jones* and his wife, by their answer, said that it may be true that the plaintiffs, or some of them may be owners or occupiers of several ancient messuages, and of several coppices and other wood grounds within the said parish, and within several years past have cut quantities of coppice wood and other wood, but whether they were burnt or used for fire wood in their houses, or upon the farms upon which such wood was cut, or in repairing and amending the fences of the lands and tenements belonging to the farms, they knew not, but believed, that they did not set out their tithes, or give any satisfaction, which ought to have been done. They said that they knew not, nor believed the custom and usage by the bill set forth, or that there was exemption from tithes, but that all tithes within the parish ought to be paid according to the general law of the land. They said, that there is a piece of ground in *Skinfield*, which has the denomination of *Lot Acres*, and that it may lie in *East Mead*, but they knew not that no tithes in kind are due and payable for the same; neither knew they whether any of the plaintiffs are seised in fee, or farmers of the said *Lot Acres*, nor that in lieu of the tithes in kind from them, the rectors or impropriators, and their predecessors, from time immemorial, have enjoyed *the Dole* in *East Mead*, but that it has always been enjoyed by the dean and chapter of *Hereford*, under the same title as they held the tithes and other glebe land. They knew not that in lieu of the tithes of the said *Lot Acres* besides the *Dole*, every occupier of the said *Lot Acres*, for every lot acre by him occupied, upon request made by the rector or farmer of the said rectory once in every year, ought to cut one swaith of grass growing on the said *Dole* when fit to cut, in full satisfaction of all tithes growing on the said *Lot Acres*; believed that some of *the Lot Acres* paid tithes; that there may be a piece of glebe land having the denomination of *the Dole*, but they denied that they knew the same to be held in lieu of tithes for *the Lot Acres*; knew not that the plaintiffs, as occupiers of the said *Lot Acres*, were always ready to cut a swarth upon the said *Dole*; believed they never required it, there being no such duty incumbent on them, or that the plaintiffs, or any on their behalfs ever tendered themselves; knew not what coppice woods or shawes the plaintiffs have, within seven years past, cut or made into faggots, hoops, bavins, hop poles, or hurdles, but if they did not duly set out the tithe thereof they will account for and pay the same, denying there is any such custom as in the bill to exempt therefrom; believed all wood ought to be put into a titheable condition, and that the tenth faggot, bavin, hop pole, and hurdle ought to be paid, but as for hoops, they do not insist that the same ought to be made into hoops, but that what are designed for hoops are to be tithed before worked, or, if worked, then the workmanship to be paid by the impropriator; believed that of right the farmer or occupier, cutting or mowing the first
math,

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against
JONES
AND OTHERS.

math, ought to ted and spread abroad the grafs so cut, and afterwards, at their costs, to gather into winrows, and after into grafs cocks of equal bigness, without fraud, and to set out every tenth cock to the use of the rector or his farmer, as in the bill; but denied that, by reason thereof, they are by any custom exempt from the payment of the tithes of grafs and hay of latter math; believed that, since clover came into use, the custom of tithing the first crop every year hath been in such manner as in the bill; and denied that the second crop, which is better than the first, is by any custom exempt from payment of tithes; they confessed that there is a vicarage endowed with small tithes and several lands within the said parish; that the plaintiff *Oake* is vicar, and so has been for several years; it may be true the said vicar and his predecessors, seised of the vicarage lands, have enjoyed the same tithe free whilst held by themselves; but that the tenants of the same, either under the said vicar or his predecessors, are not, nor ought to be exempt from payment of all tithes growing on the said lands, for that such tenants, as laymen, are by law liable to pay; they denied that the plaintiffs, or other occupiers, ought to be discharged of the tithes of all tares vetches, clover, and other grafs cut green and unripe, and given for sustenance for their cattle of the plough or milk kind when they have not had sufficient meadow and pasture for them, for that the plaintiffs overstocking themselves with more cattle than they have grafs for, cannot be a sufficient reason for them to lose any part of their tithes; they said that the defendant *Mary Jones* and her trustees hold the impropriate tithes of *Shinfield* to her own use, independent of her husband, the other defendant, *John Jones*, by lease under the dean and chapter of *Hereford*; and that none of the lessees or farmers of the said rectory and tithes had ever allowed the exemptions and observed the customs and manner of tithing as stated in the bill.

The defendant *Stoughton* said that he is trustee for the defendant *Mary Jones*, but is a stranger to the customs and manner of paying tithes and other matters stated in the bill.

The defendants, the dean and chapter of *Hereford*, by their answer, confessed that they are seised in fee of the impropriate rectory or parsonage of *Shinfield*, and of all the profits, tithes, and hereditaments thereunto belonging; and being so seised, by lease dated the twenty-sixth of *June*, in the eleventh year of *William the Third*, made between them and *Wm. Stoughton* and *S. Morris*, did demise unto them all their said parsonage of *Shinfield*, with all houses, tithes, barns, and profits thereunto appertaining (the chapel of *Swallowfield* excepted), to hold for twenty-one years, under the rents, covenants, and agreements therein mentioned; that *Stoughton* and *Morris*, their under

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tenants,

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tenants or assigns, enjoy the same, and hoped that they shall not be interrupted therein; but that they cannot set forth whether there be any such customs or *modus*es for payment of tithes, or any exemptions, as in the bill alledged.

The plaintiffs replied; the defendants rejoined; and several witnesses were examined on both sides; and,

Upon opening the pleadings, the plaintiff's counsel prayed the said customs might be confirmed by the decree of this court; and after hearing counsel for the defendants, and reading several depositions taken in the cause, and on full debate,

The Court of opinion, that the custom respecting *firebole* is good;

and also respecting the after-math of grass;

and also respecting the vicar's glebe.

THE COURT was of opinion, that the custom in the bill charged for wood spent in husbandry, houses, and repairing the fences on the premises, to be discharged of tithes, is a good custom; and also that the custom in the bill charged for paying of tithes of the first math of meadow ground in grass cocks, and the clover in great cocks, in lieu of the tithes of the hay of the second math of the same ground, is a good custom; and likewise that the glebe of the vicar of the said vicarage, in the vicar's own, or in his tenant's hands, ought, by the endowment and usage in the bill charged, to be discharged from paying any tithes to the impropiator, his tenant, or under tenants of the said impropriation; and the same were decreed accordingly. But the Court made no decree as to the tithes of the *Lot Acres*; the number thereof being uncertain; or as to wood made up fit for market; or as to green vetches (*a*); and as to them, the bill was dismissed.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

(*a*) See other causes touching the said parish, Trinity Term, 12. Wm. 3d. and Trinity Term, 13. Wm. 3d.

TRIN. TERM,
4 Q. ANNE.

FENWICK *against* OGLE.

Northumberland, 3d July 1705.

The vicar of Eglington, in Northumberland, claims small tithe

THE vicar of Eglington, in the county of Northumberland, claimed tithes in kind.

in kind.

The defendant says the parish of Eglington consists of lands called the Town Head and the Town Foot; and a custom of

The defendant Henry Ogle stated, that the town of Eglington is divided into several parts, which are known by the names of the *Demesne Lands*, the *Town Head*, the *Town Foot*, and drawing a load of turf to the vicarage for the second, in lieu of tithe hay.

the

the Large Common belonging to the whole; that the *demesnes* consist of seven farms, the *Town Head* of five farms, and are the inheritance of the defendant; that *the Town Foot* consists of five farms, and belong to *Lord Grey*; that a *modus* of thirteen shillings and fourpence had been yearly, time out of mind, paid to the vicars of *Eglingham* for all tithes arising within the *Demesne Lands*; and that for the *Town Head* all manner of tithes had been paid in kind to the plaintiff, except tithe hay, for which there was a custom, time out of mind, of loading, for every farm, one fother of turfs out of *the Common* to the vicar's house when demanded by the vicar; and he denied that ever any tithe hay in kind was ever paid for *the Town Head*.

FENWICK
against
OGLE.

The other defendants insisted upon the same *moduses*, and admitted that they rented of the other defendant *Henry Ogle* the *Demesnes* and *the Town Head*, and insisted that they had tendered the plaintiff the said *modus* for the *Demesnes*, which he had refused to accept.

An issue was directed to try, "Whether there hath been a *modus decimandi* of thirteen shillings and fourpence *per annum* and time out of mind paid to the vicar of *Eglingham* for the time being, for or in lieu of all manner of tithes yearly growing or arising within the seven farms called the *Demesne Lands*, or not?"

An issue to try
the *modus*.

And the defendants were ordered to account with the plaintiff for the value of the tithes of the things titheable which they had kept upon *the Town Head* and *the Large Common*, and for the rest of the tithes demanded by the bill.

The tithes of
Town Head de-
creed.

A trial was accordingly had, and a verdict given for the plaintiff, that there was not any such *modus*.

Verdict against
the *modus*.

IT IS ORDERED BY THE COURT, that the defendants shall satisfy the plaintiff for the value of the tithes which arose upon the said seven farms called *the Demesne Lands* demanded by the bill.

Tithes of *Town*
Foot decreed.

DRAKE *against* BROOKING.

TRIN. TERM,
4. Q. ANNE.

Devonshire, 6th July 1605.

THE bill stated, that the plaintiff, from *Michaelmas* 1692, had been entitled to all manner of tithes arising within the rectory of *Ipplepen*, with the chapel of *Woodland* annexed, in the county of *Devon*, by grant from the dean and canons of *Windsor*; and

The grantee of
the tithes of *Ipplepen*, in *Devonshire*, claims the
tithes of cyder
calves, and her
tithes.

age, and says the defendant removed his sheep and cows to avoid

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charged,

DRAKE
against
BROOKING.

charged, that the defendant had driven his cows and sheep before calving, yeanning, and shearing, which were kept most of the year in *Ipplepen*, into the parish of *Marledon*, and other parishes, to avoid the payment of the tithes of calves, lambs, and wool to the plaintiff, he being under composition with the vicar of *Marledon*; that he hath also, for several years, drawn his best fleeces of wool and lambs, pretending they belonged to *Marledon* stock, and set out the tithes of the worst, and when the plaintiff refused the same he sent the lambs to the *ewe tree*, and the wool to *the chancel*.

The defendant
states several
customs in lieu
of tithes,

and that he ten-
dered 11. 8s 8d.
in full satisfac-
tion,

The defendant, by his answer, confessed that he had been owner of several tenements called *Bulley*, in the said parish, part whereof he kept in hand, and part he set out; that he kept cows, but never above six, and that by custom one penny is due for each cow; that he also kept oxen to plough, young, and other cattle; that he made all his apples into cyder, save a few spent in his house, for which, by custom, twopence a hoghead is due to the plaintiff; that he is indebted to the plaintiff one penny for his hearth and garden ever since the plaintiff was rector; that for the year 1696 he tendered to the plaintiff one pound, eight shillings, and eightpence, for his tithes due that year, and that in *May* 1699 he tendered the plaintiff five pounds for all his tithes for the said year, and desired him to take his due, and return the overplus, which he refused; that he bought a small number of shorn sheep, which he fed and sheared before the next shearing, but at other times bought sheep shortly before shearing, shorn them in *Ipplepen*, and paid the plaintiff the tithe wool; that he fed and sold off heifers and some other cattle not used for the plough or pail. He confessed that in some years, before yeanning and shearing time, he had ordered some of his ewes and sheep to be driven to his estate in *Marledon*, to prevent the plaintiff demanding tithes of the same, designing to proportion the same according to their having been fed in several parishes, but without any intention to defraud the plaintiff; that the ewes and sheep driven into *Marledon* as aforesaid were partly kept there and partly in *Ipplepen*, but that they were kept the greater part of the year in *Ipplepen*. He confessed also that he is under composition with the vicar of *Marledon*, and that on the plaintiff refusing the tithes of lamb and wool, according to the custom, he sent the lambs to *the yew tree* in the church-yard, and the wool to *the chancel*.

The tender in-
sufficient.

THE COURT declared, that the tender insisted on by the defendant's answer is not a good and sufficient tender to bar the plaintiff,

The tithes de-
creed.

AND IT IS THEREUPON ORDERED BY THE COURT, that the said defendant shall account with and satisfy the plaintiff for the tithes in arrear and due during the time demanded by the bill
in

in such manner as after mentioned, *viz.* twopence for each hogf-head ; one penny for a cow, in lieu of the tithe of the milk of each cow ; the tenth part of the value of the hoarded apples, and of the apples sold ; two thirds of the tenth part of the value of all the lambs fallen, and of all wool shorn in the parishes of *Applepen* and *Marledon* ; the tenth part of the value of the herbage for feeding and agisting of heifers, and barren and unprofitable cattle, not bred to the pail or plough ; for every calf reared, one halfpenny ; and for every calf sold, the tenth penny.

DRAKE
against
BROOKING.

HUMPHREYS *against* STOPHER ; *et è Contra.*

MICH. TERM,
4. Q. ANNE.

Suffolk, 10th December 1705.

THE rector of *Spexhall*, in the county of *Suffolk*, charges by his bill, that the defendant, for two years, farmed and occupied several lands in the said parish, and had yearly quantities of corn, grain, and turnips, growing thereon, and had fed several cows ; for all which he ought to have paid tithes.

Tithes shall be paid to the rector for turnips drawn from the ground and given to milch cows, though in the parish in which the turnips grew, and the cows were milked.

Bunb. 314.

The defendant said, that he had occupied land in the said parish for three years past ; and that in the year 1702 he sowed some acres of turnips, and gave them out, and fed them up with his dairy cattle, and gift cows that had done labouring in the dairy, and other cattle, for which he paid tithe to the plaintiff, either in kind, or according to custom, and did not give out the same to grazing or fat cattle, but fed the same out upon the said farm and in the said parish for the winter feeding the said dairy and titheable cattle, which must have been fed with other meat if not with turnips, and that no tithes were due for turnips so used and fed by the dairy and titheable cattle ; that he yearly paid or satisfied the plaintiff for all other tithes, and had a discharge in *November 1702* in full till *Lammas*, except for the turnips then in the ground, which he insisted were not titheable, having sown the same with an intention to spend them for the purposes aforesaid, and not otherwise ; that the said crop so sown, fed, and given out in the said year was not worth above twenty shillings.

The defendant filed his cross bill against the said plaintiff, setting forth, that there were divers customary payments of tithes for lactage, hay, and other titheable matters in the said parish therein mentioned, which are likewise set forth in his said answer ; and prayed to have a discovery of what tithes the said *Humphreys* had received a satisfaction for from him, and to have the *modus*es and customary payments established by the decree of this court.

The rector said, that he believed the said *modus*es and customary payments to be as in the bill ; and confessed, that he had

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against
STOPHER;
et è Contra.

received the same ever since he was rector, and also satisfaction for all the tithes, either in kind or according to the customs, except turnips; but denied that he pretended to destroy the said customs.

In both the causes, the plaintiffs replied; the defendants rejoined; and witnesses were examined; and they came on to be heard the twenty-sixth of *November* last; and upon reading the proofs taken in the cause, and on full debate, it was then ordered, that the said causes should stand over for the opinion of the Court, and the Court to be attended with precedents. And the Court having been attended with precedents accordingly,

IT IS ORDERED AND DECREED BY THE COURT, that tithes for turnips drawn and severed from the ground, and given to dairy and milch cattle, though upon the farm, and within the same parish wherein the same cattle were kept, are due; and that the defendant *Stopher* shall forthwith pay to the plaintiff the sum of eighteen shillings for the tithes of nine acres of turnips by him or his order pulled and severed from the ground in 1702, and given to his dairy cattle in the said parish of *Spexhall*, with his costs to be taxed by the deputy remembrancer of this court.

HILARY TERM
4. Q. ANNE.

GARDNER against POLE; et è Contra.

Derbyshire, 23d February 1705.

The rector of
Eckington, in
Derbyshire, claims
tithes of hay and
corn.

THE rector of *Eckington cum Killamarsh*, in the county of *Derby*, claims all tithes of corn, wheat, rye, barley, oats, pease, beans, sheep, pigs, lambs, and other titheable matters, in kind.

S. C. 2. Eq. Abr. 734. S. C. 1. Bro. P. C. 214. S. C. Rayn. 103. 111. S. C. 8. Vin. Abr. 18.

The defendant
says, that in
Spinkhill, Eckington, Mesbrough,
and *Killamarsh*
quarters of the
parish there are
meadows of 12d.
an acre for low
meadow, and
8d. an acre
for high hay
ground, in lieu
of tithes hay;

The defendant said, that in *Spinkhill, Eckington, and Mesbrough* quarters or divisions (being part of *Eckington* parish), and also within the lordship or township of *Killamarsh*, all the hay grounds are distinguished into two sorts of meadow, viz. low grounds, properly meadow grounds, which lie subject to be overflowed by the river *Rother*; and high grounds, which are never overflowed by the said river; that for the lands which lie within the said three quarters as aforesaid, and also within *Killamarsh*, no tithe hay ought to be paid in kind, but an ancient *modus* of twelve-pence an acre for every acre of low meadow ground, and eight-pence for every acre of high ground yearly, when the same have been mowed for hay, and no more; that the tithe hay in kind is at least three times the value of the *modus*, and that the said *modus* hath been inviolably kept, time beyond memory, even for the low meadows, when the hay was spoiled or carried away by
the

the river ; that for the lands in *Troway Quarter*, being another division of the said parish, there is another *modus* for tithe hay ; and no tithes have ever been paid in kind. He confessed, that he has several acres of ground, wherein he got hay in the year 1704 ; and insisted, that the lands whereon the same grew were always discharged of the payment of tithe in kind by the payment of the said eightpence an acre, being all high ground ; and that he had paid the same duly, and which had always been accepted as a *modus* for the said hay grounds, except for the year 1704, and except when one *Murphy* was tenant to the said farm, about eighteen years ago, whose wife during his absence let the plaintiff take tithe hay in kind, which the plaintiff acknowledged was wrong. The defendant then set forth his tithe corn for the year 1704 ; and insisted, that in the four quarters of the said parish, the custom, time out of mind, of setting out tithe corn was not in stacks, but according to common right, *viz.* every tenth sheaf of corn bound up, and every tenth reafe of pease. The defendant further insisted on small *moduses* for milk, cows, foals, and hens, and other small tithes, for which, he said, he had fully satisfied the plaintiff, as also for his tithe wool and lamb in kind ; for though his sheep went not half the year in the said parish, yet he paid the whole tithe. He also said, that hay was much scarcer and dearer in the parish in former times than it now is.

The defendant *Pole* and divers other land owners and occupiers of land within the said parish, filed their cross bill against the said *Gardner*, and set forth the several *moduses*, rates, or compositions of twelpence an acre for low meadow grounds, and eightpence an acre for high hay ground, in lieu of the tithe of hay ; and insisted, that the tithe corn ought to be set out, *viz.* sheaf corn by every tenth sheaf thrown out, according to the common right, and pease by every tenth reafe. They also insisted, that when lands there have been sold from the farmers paying such *moduses*, that the said *moduses* have, or ought to have been proportioned according to the value of the lands so aliened, and prayed a discovery of several other *moduses* for new and old milch cows, and *moduses* for horses, gardens, foals, poultry, honey, and bees, and all other small titheable matters within the said parish ; and charged, that all the said *Pole's* tithe corn was paid for in 1704, and all his small tithes.

The defendant *Gardiner*, by his answer, insisted, that the tithe of sheaf corn ought to be set out in stacks, and pease in heaps ; and also insisted on tithe hay in kind to be set out in the dry corn ; but he confessed, that twelpence and eightpence an acre have been usually received for tithe hay in the parish, except in *Troway Quarter*. He also set forth the several sums of money that had been received for tithe hay in *Troway Quarter*, which were different at different times. And he said, that there have

GARDNER
against
POLE ;
et à Contra.

that there is also another *modus* in *Troway Quarter* for tithe hay ;

and that the said *moduses* have inviolably been accepted by the vicar.

The defendant also insists, that corn is to be set out by the tenth sheaf bound up, and pease by the tenth reafe.

He also states *moduses* for milk, cows, foals, &c.

The defendant also files a cross bill to establish the said *moduses*

The rector says, that corn ought to be set out in stacks, and pease in heaps ; and confesses, that the *moduses* for hay have been received, except in *Troway Quarter*.

been

GARDNER
against
POLE;
et à Centre.

been several improvements of lands, and several inclosures of arable out of the ancient common field; but he owned, that never any tithe hay had been paid in kind in the *Troway Quarter*, nor any thing but the said payments: and, Whether they be good *modus*es, or not, he submits to the Court. He also said, that the said *modus*es cannot extend to the new-inclosed lands, and that he is entitled to the said tithes thereof. He confessed that the sum he had received yearly for the whole of the *Quarter of Troway* amounted but to twelve shillings *per annum*, though that quarter be one thousand acres; and that he has the ancient books of his servants; and he set forth the several little sums or *modus*es that have been paid to him in lieu of tithe milk, lamb, wool, pease, beans, cocks, ducks, and all other things. He also confessed, that the plaintiff *Pole* had paid all that was due to him, except tithe hay, for which the eightpence an acre was tendered.

The plaintiff in the original cause replied; the defendants rejoined; and witnesses were examined on both sides; and the original cause was set down to be heard on the seventh of *February* instant, but adjourned.

The plaintiffs in the cross cause replied; and the defendant rejoined; and by order, dated the twentieth of *February* instant, it was ordered, that both causes should come on together, and the depositions in one cause to be made use of in the other.

Upon reading several of the depositions taken in the original cause, and on long debate,

The Court will consider of the *modus*es of 12d. and 8d. for low lands and high lands.

IT IS ORDERED, that as to the said *modus*es or rates of twelvepence an acre for and in lieu of the tithe hay of the low meadow ground, and eightpence an acre for and in lieu of the tithe hay of the high grounds in *Killamarsh*, and the quarters of *Eckington*, *Spinkbill*, and *Mosbrough*, the Court will consider thereof.

The bills, as to corn and pease, dismissed.

And as to such part of the cross bill as relates to the setting forth of the tithe of pease and other corn and grain, and such part of the original bill as relates to the tithes of corn and grain, they are both dismissed.

The *modus* in *Troway Quarter* established.

And as to the said *modus*es for the hay in *Troway Quarter*, the Court doth establish the same.

And as to the rest of the depositions not read (except such of the witnesses as live in the parish of *Eckington cum Killamarsh*, and have any interest in land there), are hereby admitted to have been read as if they had been read.

This day, the sixth of *June* 1706, the cause came on to be further heard, and for the judgment of the Court; and

The Court declares the 12d. and 8d. an acre to be *compositi*ons, and not *modus*es;

THE COURT, having taken consideration of the matter, declared, that the said payments of twelvepence and eightpence an acre are no *modus*es, but *compositi*ons; and that the tithe hay ought to be

be paid in kind for those lands for which the said compositions are alledged to be paid.

IT IS THEREUPON ORDERED AND DECREED by the Court, that the defendant *Pole* shall pay to the plaintiff the value of the tithe of hay for the years demanded by the bill; and it is referred to the deputy remembrancer to take the said account, and to tax the plaintiff *Gardner* his costs in the original cause as to the examinations relating to tithe corn, for which the defendant *Pole* is to have costs, he having paid all his tithe corn.

And as to the *modus*es in *Troway Quarter*,

THE COURT doth establish the same as they are set forth by the defendant *Gardner's* answer to the cross bill; but no costs are to be paid by him in respect thereof; and as for all other parts of the said cross bill, the same is hereby dismissed, with costs to be taxed for the defendant *Gardner*.

But the plaintiff *John Pole* appealed to the house of lords against the said decree, insisting, that the *modus*es having been inviolably observed, and being fixed and certain, and what might be permanent; it was on the tenth of *March* 1707, ordered and adjudged, that the decree should be reversed, it appearing to their lordships, that the appellant had proved the *modus*es insisted on by his answer.

GARDNER
against
POLE;
et c. Contra.
and order the
tithes of hay to
be paid in kind.

The decree re-
versed, on ap-
peal to the house
of lords.
1. Bro. P. C.
214.

LEIGH against WARREN.

Cheshire, 31st January 1705.

HILARY TERM
4. Q. ANNE.

THE bill stated, that the plaintiff was the lawful owner of the rectory and parsonage of *Presbury*, in the county of *Chester*, and of all manner of tithes arising therein; and also of the manor of *Adlington Butley* and *Presbury*, with the appurtenances; that all the inhabitants, owners and occupiers of any lands, tenements, and hereditaments within the said rectory and titheable places, and particularly within the town, hamlet, or tithing of *Poynton*, in the said parish of *Presbury*, ought to pay to the plaintiff their tithes; that the defendant, since *April* 1691, had been, and still was owner and occupier of the capital messuage called *Poynton Hall*, and of *Poynton Park*, which hath been all that time stocked with bucks, does, and other deer, and of divers other lands, mills, and hereditaments therein, great part of which premises were fed and depastured with all sorts of beasts, horses, dry, barren, and unprofitable cattle, and of which he had made great profit; that the said defendant had great quantities of milk, and numbers of calves, sheep, lambs, pigeons, and also wool and other titheable things, for which he ought to have paid tithes, and *Easter* offerings, for himself and wife, one penny a-piece; and for every person that hath dwelt with him of above the age of

The plaintiff, as
rector of *Pres-
bury*, in *Chester*,
and lord of the
manor of *Adling-
ton*, claims tithes
of *Poynton Hall*,
Poynton Park,
and *Poynton
Mill*;

and states seve-
ral customary
sums to be paid
in lieu of tithes;

LEGN
against
WARREN.

and claims the
right to hunt
and kill a buck
and a doe in
Poynton Park ;

and states, that
he had leased
the tithes of hay
and corn of
Poynton and
Worth to the
defendant.

The defendant
confesses the
customary sums.

of sixteen years, a halfpenny a-piece; and one penny, called smoke penny; and for every barren cow, one penny; and for every calving cow, three halfpence, and every tenth calf in kind; and if under ten, and above the number of seven, then one calf out of every seven is due to the plaintiff in kind; and for every swarm of bees, one halfpenny; and for every colt or foal, one penny; and the tenth pig in kind ought to have been yielded and paid to the plaintiff, or some rate or composition for the same; that by custom, prescription, or usage time out of mind, or by virtue of some composition or agreement, or as a *modus decimandi* or customary rate or payment in lieu of tithes of the said park or some other lands held by the defendant, one fat buck and one fat doe of and in their respective seasons yearly, have and did become due and payable by the owners and occupiers for the time being of the said park, called *Poynton Park*, to the owners of the said rectory or parsonage; that the defendant's ancestors, and he till of late, have and still ought to permit the owners and occupiers of the said rectory, their friends and servants, in the respective seasons, to hunt, course, or kill the said buck and doe yearly in *Poynton Park* aforesaid, and to carry them away in the skins, without payment of any fee for the same; and if not so hunted, coursed, or killed, the owners of the said park, upon notice given, ought yearly to kill the said buck and doe, and to send the same by their keeper or servant to *Adlington Hall* without any fee or fees; and the defendant's ancestors have, and the defendant ought still, yearly to yield and pay the same to the plaintiff; that the plaintiff did, some time before, demise to the defendant the tithes of hay and corn of the township of *Poynton* and *Worth*, in the said parish of *Presbury*, at and under the yearly rents, viz. thirty-five pounds, ten shillings, for *Poynton*, and sixpence for *Worth*, payable yearly at *Michaelmas*; that the defendant having got the said lease in his possession (the plaintiff having no counterpart), he refused to pay his tithes in kind, or the deer, or any rate or satisfaction for the same, as also the rents reserved on the said lease. The bill therefore prayed a discovery of the said leases, and of the quantities and values of his tithes.

The defendant confessed that the plaintiff's ancestors had been, and that the plaintiff was owner of the said rectory and parsonage, and entitled to all tithes, both great and small, and customary payments due (except the tithe of hay and corn of the townships or hamlets of *Poynton* and *Worth*, which the defendant holds by virtue of the demise and lease in the bill, and entitled to all duties and services due in respect of the said manor or lands and tenements in the bill; that he was owner of the capital messuage, called *Poynton Hall* and *Poynton Park*, and of one water corn mill, called *Poynton Mill*, and other lands and hereditaments in *Poynton*, a great part of which are in lease to several tenants, but

knew

knew not how the same have been used or stocked, nor with what cattle, nor what tithes have arisen and fallen thereon. He denied the manner of tithing as in the bill stated; and insisted, that he ought not to pay tithes in kind, but the sums following, viz. fifteen shillings for the tithes of calves arising by cows kept at or in *Poynton Hall*, and depasturing the said park, demesne, and lands thereto belonging; and twelpence yearly, in lieu of all small tithes arising or demandable for or in respect of *Easter* offerings or titheable matters arising at, in, or about *Poynton Hall*, and the orchards, gardens, and other titheable matters thereto belonging, commonly called *the white tithes*, or *Easter roll* (saving the tithes of lamb and wool); that there has been always paid a customary rate for *Poynton Mill*, of three shillings yearly, and no more; and that there was due to the plaintiff, for tithes of wool and lamb of sheep kept and depastured in *Poynton Park* and demesnes in 1702, four shillings; and he acknowledged the arrears of twelpence and three shillings as aforesaid for four years past, and fifteen shillings for calves for three years, and four shillings for lamb and wool for 1702, all which he was ready to pay. He denied, that he or his family had dwelt at *Poynton* for the time in the bill mentioned, but at *Stockport*, in the parish of *Stockport*, except for a day or so. He also denied that there was any such custom to pay or deliver a fat buck or doe in their season, or that, by any custom, or prescription, or usage time out of mind, or for any time whatsoever, or by virtue of any agreement, or as a *modus* or customary rate or payment in lieu of tithes, by any lawful title, way, or means, or upon any other colour or pretence whatsoever, a fat buck and doe have been due or payable by the defendant or any of his ancestors to the plaintiff or any of his ancestors, as in the bill is set forth. He said, that upon his taking a lease of the tithes of corn and hay of *Poynton* and *Worth* from the plaintiff's father for thirty-one years, if he should so long live, at thirty-five pounds for the first year, and thirty-three pounds during the remainder of the term, it was then insisted on, that the plaintiff should have of the defendant a fat buck and doe, or else that he should have no such lease, and that sooner than lose the lease he consented to such a clause to be put in, and that it had since been complied with. He confessed, there remained twenty-seven pounds, fifteen shillings, in arrear of rent for the tithe of corn and hay of *Poynton* and *Worth* for 1703, by virtue of the said lease.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon debate of the matter, the *modus* of three shillings for the mill being agreed to by both parties,

IT IS ORDERED AND DECREED BY THE COURT, that the said defendant shall account with and pay to the plaintiff all such monies as are in arrear for the tithes of hay and corn arising within

LEGE
against
WARREN.

and states other
customary pay-
ments;

and that 3s. a-
year is paid for
the mill;

but denies the
plaintiff's right
to hunt a buck
or doe.

The defendant
decreed to pay
the tithes of hay
in *Poynton* and
Worth;

LEON
against
WARREN.

and the 3s. for
the mill;
and tithes of
wool, lamb, and
calves;

but the tithe of
pigeons refused;
and the claims
of the buck and
doe dismissed.

within the said township of *Poynton* and *Worth*, and shall continue the future payments thereof during the continuance of the said demise, according to the several yearly rates, viz. thirty-five pounds, ten shillings, for *Poynton*, and six pounds for *Worth*; and shall also pay to the said plaintiff the said *modus* of three shillings for the said mill, and all the arrears thereof; and the said defendant is to go to account for all small tithes and the tithe of wool, lambs, and calves; and it is referred to the deputy remembrancer to take and state the said account, who is to report the matter relating to the pigeons specially for the further judgment of the court; and as to the plaintiff's demand by his bill of a buck and a doe, the said bill is hereby to stand dismissed, without costs.

EDW. WARD.
THO. BURY.
RO. PRICE.
S. LOVELL.

HILARY TERM
4. Q. ANNE.

CAISTER against HORNSBY.

Lincolnshire, 19th February 1705.

The impropriator of *Bottesford*, in *Lincolnshire*, claims from the vicar the tithes of wool.

The vicar says, that he kept a few sheep on a common appurtenant to his glebe, and that the plaintiff had cows, for which he paid no tithe milk.

THE bill stated, that the plaintiff, in right of his wife *Mary*, was impropriator of the parsonage impropriate of *Bottesford*, in the county of *Lincoln*, and entitled to the tithes of all sorts of corn, hay, hemp, flax, rape, turnips, barren cattle, and wool, within that parish.

The defendant said, that he had been vicar of *Bottesford* for thirty years past, and was, by the endowment of that vicarage, entitled to all small tithes (except wool); that the plaintiff was entitled to the tithes of corn and hay (except in tofts and crofts, which he insisted belonged to him); and that he ought not to pay any tithes to the parson or rector of any thing arising upon or out of the glebe lands in his own possession. And he set forth his number of sheep, and the quantities and values of the wool; but insisted, that he ought not to pay any tithes of the said wool, in regard he kept the sheep yearly upon a large common, wherein he had right of common for the same, and greater quantities, as belonging to the glebe which he enjoyed, as belonging to the vicarage, by virtue of the said endowment. He also said, that he enjoyed a small parcel of land not glebe, which was necessary for the maintenance of his family, and that in extremity of weather in winter he brought his sheep into the said ground not glebe; but nothing ought to be demanded for the tithes; for that the plaintiff had cows on grounds not belonging to the parsonage, which afforded much milk, the tithes of which belonged to the defendant, but he never had any for the same; and believed, that if every thing due from the parson and vicar

was

was stated, it would be equal ; more especially as the plaintiff, for several years, had gathered of other parishioners several small tithes which belonged to the defendant. He said, that his said vicarage was not *communibus annis* worth thirty pounds *per annum*.

CAISTER
against
HORNSBY.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading several depositions, and upon full debate, it is ordered by the court, that the said bill be dismissed, with costs to be taxed.

The bill dismissed.

GREENWAY *against* THE EARL OF KENT ; *et c* HILARY TERM
4. Q. ANNE.
Contra.

Herefordshire, 31st January 1705.

THE bill stated, that the plaintiff was, and for twenty-two years past had been, vicar of the parish of *Walford*, in the county of *Hereford*, and entitled to all manner of vicarial tithes, and particularly to the tithes of wood and bark ; that the late *Earl of Kent* was in his life-time, and the defendant the present earl, as executor of his father, is possessed of a coppice called *the Chase*, and other woodland within the said parish and the titheable places thereof ; that they, or one of them, in 1701 and 1702, cut down upon *the Chase* several quantities of wood, which they sold, and also stripped and sold great quantities of bark from the said wood and poles so cut down ; that the greatest part of the said wood and poles was not of twenty years growth : and if any were, the same were, but some few poles growing *sparsum* from the stubs or stocks of other trees, and were not fit for timber, but only for firewood, making of laths, or such like uses, and were sold to the iron masters, who used the same for fuel at their furnaces ; that the defendant pretends, that if any tithes were due for all or any of the said wood or bark, the plaintiff ought to allow thereout the charges of cutting, cording, and stripping the same, and twenty-one cords to the score, though, by the custom of the said parish, and other adjacent parishes, the owners of woods, time out of mind, are used and ought to size, make up, and cord their wood into marketable ware, and then to set out the tithes or tenth part thereof.

The vicar of *Walford*, in *Herefordshire*, claims the tithe of wood cut down and sold ; of the bark peeled from the said wood ; of underwood sold to iron masters for fuel ; and of saplings cut for poles.

The defendant confessed, that he was seised of the wood called *the Chase*, in the parishes of *Walford* and *Rope*, and other woods in the parish of *Ross Weston under Penyard*, and other adjacent parishes in the said county, which, upon the death of his father in 1702, came to him ; which said woods consist of innumerable quantities of timber trees ; of oak of thirty years growth and upward, preserved for timber by his ancestors at the respective fallages thereof ; and also of coppice wood and underwood of several sorts under twenty years growth ; that his father used to cause the young oaks under twenty years growth to be stripped,

The defendant states the several woods and coppices he is possessed of,

and the manner in which he set out the tithe thereof.

and

GREENWAY
against
 THE EARL OF
 KENT;

and the bark to be ranked by itself, distinct from the barks of the timber trees of thirty years growth, and then caused the coppice or underwoods to be fallen, cut out, and sized into billets, and corded by itself, and so delivered the same to the iron masters; and caused the stubbs and stocks on which such underwood usually grew to be cut off close to the ground, and corded with such coppice wood; and then caused the timber trees of thirty years growth to be stripped, and the bark to be picked by itself, and so delivered to the buyers; and then the timber trees of that growth to be fallen, and the sound and merchantable parts thereof to be sold, and the other employed in repairs, &c.; and the lops and offals he caused to be sized into billets, ranked and corded by itself apart from the coppice woods, and delivered the same to the iron masters; and he said, that all such timber trees of thirty years growth and upwards were entirely free from the payment of tithes, and therefore he used separate management, that he might know for what part he ought to pay tithe, and what was tithe free; that the usual method of tithing wood in those parts hath been, time out of mind, by a proportionable share of the money arising by the sale thereof, the person entitled thereto making a proportionable allowance for the cutting and stripping; and that his father having made many fallages, used the above management thereof; that he believed his father ordered the wood in question to be fallen, and separately managed as aforesaid; but before it was completed, the defendant ordered the carrying on and finishing thereof according to his father's method, which was done accordingly. He further confessed, that if the plaintiff be vicar of *Walsford*, he has a right to the coppice wood, bark, and underwood so separately stripped, cut, corded, and delivered out of *the chase* in the said years; but he insisted, that he has no right of tithe in the timber trees of oak of thirty years growth and upwards, or the bark or offal of the same, not being mixed; and therefore he had refused to pay tithe for the same. He further stated, that the plaintiff had acquiesced without demanding his tithes till *September 1702*, when the fallage was almost complete; and his father dying in *August* following, whereupon the defendant became entitled, but was not applied to about the premises. He said, that as soon as the titheable effects could be brought to a computation, a particular was delivered to the plaintiff, stating an account of the wood and bark of the said fallage; that for the better distinction of the said wood, the bark of the timber trees of oak of thirty years growth was called *polewood*, and the *cord wood* made of the offal thereof was called *pole bark*, both which he insisted were tithe free; and the bark and cord wood under twenty years growth was called *coppice bark* and *coppice wood*. He also confessed, that the plaintiff applied to him, and insisted upon a right of tithe of timber trees, pole wood, and pole bark; but that five shillings *per cord* for the tithe of three foot wood is a full tenth of the nett money

money arising by sale of the coppice woods, being allowed for his expences and damages in the management thereof ; and that he ordered his agent to give the plaintiff five shillings and sixpence for three foot wood, which he still is ready to pay. But he denied the substration of any tithe wood, other than the trees of thirty years growth and upwards ; and believed that all the pole wood bark, and underwood were sold to such persons, and at such prices as in the schedules to his answer ; and he said, that he is ready to pay the tenth of the money of the coppice wood ; but hoped, that he is not liable to do so for the timber of thirty years growth and upwards, nor for the pole wood or pole bark made from the stripping and offal thereof.

Greenway
against
THE EARL OF
KENT ;
at 2 Contd.

To which answer the plaintiff replied, and the defendant rejoined.

The defendant filed his cross bill against the plaintiff, thereby setting forth the method used in the felling and stripping of wood and of paying tithes for the same, to the same effect as in his answer aforesaid ; and insisted, that it is the custom to pay tithes by a share of the money arising from the sale of such wood ; that his father, in 1701, proposed to *Greenway*, that he should have a share of the money so arising ; and that a meeting was appointed ; but that on the defendant's silence, he disposed of the falling, and delivered an account to the defendant with offers which he refused. The bill therefore prayed, that the defendant may answer the premises.

Files a cross bill,

The vicar, by his answer, confessed, that the late *Earl of Kent* made such separate management as in the bill ; but said, that the same is a practice altogether new, and was never offered at till eight years since ; he believed, that it has been usual to take a tenth part of the money arising by sale in lieu of tithes ; but insisted, that he is not obliged to do so ; and said, that it is customary to treat about the tithes before the falling, unless the same be paid in kind ; and he set forth the earl's letters, and his application to him. He also confessed, that an offer had been made at five shillings and sixpence *per cord* for the coppice wood, allowing twenty-one cords to the score, which he had refused, having as much paid him in 1683 and 1685, without allowing twenty-one cords to the score, and including the pole wood of twenty years growth and upwards, which was not separated, or denied to be titheable ; and he insisted, that he has a right to the tithes of pole wood as coppice wood, the same having been paid time out of mind till such separate management was made as aforesaid.

which the vicar
answers.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined in both causes ; and the cause came on to be heard on the tenth of *July* last : and upon reading the depositions of witnesses taken in the original cause ; and upon long debate of the matter, it is ordered by the Court, that the cause

GREENWAY
against
THE EARL OF
KENT;
et Contra.

be continued in the paper of causes for the opinion and judgment of the Court. And forasmuch as no counsel attended for the plaintiff in the cross cause, it is ordered and adjudged by the Court, that the defendant *Greenway* be, and is hereby dismissed of and from the said cross bill, and all matters and things therein contained, with his costs, to be taxed by the deputy remembrancer of this court.

The original cause standing this day for the opinion of the Court,

The tithe of
wood above 20
years growth, of
underwood cut
and corded, of
bark stripped
from the same,
and of saplings
under 20 years
growth, decreed.

THE COURT declared, that the plaintiff was entitled to, and ought to be relieved for the tithes of all wood above twenty years growth, as well as underwood cut and corded within the said parish of *Walford* in 1701 and 1702, and for the bark stripped for the same; but that no tithe was due from such wood above twenty years growth, which was not corded, nor for the bark thereof.

IT IS THEREUPON ORDERED by the Court, that the defendant do account with, satisfy, and pay to the plaintiff, as well for the tithes of all wood above twenty years growth as of the underwood cut and corded in the said parish for the said years; and for the tithes of the bark stripped from the same; and for the tithes of saplings under twenty years growth; and it is referred to the deputy remembrancer to take the said account, and report the same.

THO. BURY.
RO. PRICE.
J. SMITH.

EASTER TERM,
5. Q. ANNE.

NEWTE against CHAMBERLAIN.

Devonshire, 22d April 1706.

The tithe of a
horse malt mill
is a personal
tithe; and the
tenth part of the
clear profits a-
rising from corn
ground in such
mill, over and
above all inci-
dental charges,
is to be paid as
the tithes there-
of.

S. C. 1. Eq. Abr.

366.

S. C. 9. Vin. 39.

S. C. 2. Eq. Abr.

731. S. C. 1. Bro. P. C. 157. S. C. Rayn. 106. 1087.—See also 2. Inst. 622. 3. Bulst. 212.
3. Roll. Rep. 405. Bunb. 73. 2 Peer. Wms. 463.

THE bill stated, that the plaintiff for twenty years last past had been rector and incumbent of the portions of *Pitt* and *Tidcombe*, in *Tiverton*, in the county of *Devon*; that the inhabitants within the said portions had always, time out of mind, paid or ought to have paid to the rectors thereof, the tithes of mills and malt mills erected therein, and of all other titheable matters arising therein; that, time out of mind the tenth of all corn and grain ground in grist and malt mills within the said portions, ought to be, according to custom, justly set forth, and due notice thereof given to the rector; that about six years since a malt mill was erected within the said portions by the mayor and burgessees of *Tiverton*, to which they obliged several, over whom they had influence, to bring their malt to be ground, by means whereof vast quantities had been

ground

NEWT
against
CHAMBER-
LAIN.

ground every year ; that the said mayor and burgessees had let the said mill to the defendants, who had contrived to defraud the plaintiff of his just right of the tithes arising therefrom, having in every year ground thirty thousand bushels of malt, the toll of which was of great value ; that the plaintiff had offered to accept a reasonable satisfaction for the same, by his bill, and the single value of such tithes, with his costs of suit, but that they pretended nothing was due. The bill therefore prayed a discovery of the matters aforesaid, and satisfaction for the tithes of the toll of the said new erected mill.

The defendants *Chamberlain* and *Plymton* denied, that the inhabitants, time out of mind, had or ought to pay to the rector all manner of tithes of grist mills and malt mills erected within the parish, or that, time out of mind, the tenth of all corn and grain ground in grist or malt mills therein, had been or ought to be set forth, or notice thereof given to the rector of the same ; and said, that about six years ago, a horse malt mill was erected within the said portion, and the mayor, &c. about the eighth of *May* 1699, granted to them a lease of the same for three years, at thirty pounds *per annum* ; and that several quantities of malt were ground thereat, but how much they could not set forth ; and that at the expiration of the said lease they granted a lease to one *Burridge* for twenty-one years, at forty pounds *per annum*. The defendants confessed, that they never had paid any tithes, or made any satisfaction to the plaintiff for such mill, or for the profits thereof, nor did they believe that tithes, or any thing in lieu thereof, were or ought to be paid to the plaintiff for such mill, or the profits or toll thereof, or for any other horse or hand mill within the said portions, there having been several erected for thirty years past, and never any tithes, &c. paid for the same, for that all or the greater part of the malt ground therein, was grown within the parish of *Tiverton*, and tithed before it was made into malt, or brought to, and ground at the said mill, for which reason they refused to pay tithes, or any thing in lieu thereof. They also alledged, that the plaintiff could not suffer any loss in his compositions for other malt mills by the mill in question, there being no tithe or payment, in lieu thereof, due or paid for such other malt mills, that they knew of.

The defendant *R. Chamberlain* denied, that he ever promised to pay the plaintiff fifty shillings, or any other sum, in lieu of tithes of such mill, or the profits thereof, or made any agreement for the same.

Both the defendants said, that if any tithe, or payment in lieu thereof, was due, the same was but a *personal title*, which they submitted to the judgment of the Court, and offered to do what the Court directed.

NEUTE
against
CHAMBER-
LAIN.

The defendant *Peter Chamberlain* said, that he never had rented or enjoyed the mill in question, and disclaimed all right and title to the same.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on both sides, and the cause came on to be heard the twentieth day of *February* last, when on reading the depositions of several witnesses, taken on both sides, and hearing what could be alledged by counsel, it was then ordered, that the cause should stand in the paper for the opinion of the Court, and be dismissed as to the defendant *Peter Chamberlain*.

The cause standing in the paper accordingly, the Court, upon hearing counsel, and upon mature and deliberate debate,

ORDERED AND DECREED, that the defendants shall account with, satisfy, and pay to the plaintiff, the value of the tenth toll dish, of all the corn and grain ground at the said malt mill, lately erected within the said portion of *Pitt* and *Tidcombe*, in *Tiverton*, by the mayor and burgessees thereof, for the said two years, with costs; and it is referred to the deputy remembrancer to take and report the said account, and to tax the plaintiff his costs.

But before any account was taken or report made, the defendants appealed to THE HOUSE OF LORDS from the said decree, and the appeal came on to be heard in the house of lords on *Monday* the seventeenth of *February* last, when the said decree of the court of exchequer was reversed.

The cause coming on to be heard, on the thirteenth of *June* 1707, on the said order and decree, it was ordered, that the judges should be heard to this point, viz. "Whether the
" tithes payable for corn ground in a *horse malt mill*, is a per-
" sonal, predial, or mixt tithe, and in what manner tithe is to
" be paid for corn ground in such mill, if any tithe is due for
" the same."

After due consideration had of what was offered by counsel upon the said petition and answer, and also upon hearing the judges,

IT IS ORDERED AND ADJUDGED by the lords spiritual and temporal, in parliament assembled, that the decree of the court of exchequer, complained of in the petition of *R. Chamberlain* and *F. Plymton*, shall be and is hereby reversed, and that the plaintiff in the court below, *J. Neute* (the now respondent) do recover his tithes of the said mill, in the nature of a *personal tithe*, only, that is to say, the tenth part of the clear profits arising from corn ground in the said mill, over and above all incidental charges, and to that end an account is to be taken of the profits of the said mill, and charges for the time past, within
the

the time of the demand of the plaintiff *J. Newte's* bill in the exchequer, and since; and that the said tithes do continue to be paid for the future.

NEWTE
against
CHAMBER-
LAIN,

AND IT IS HEREBY ORDERED, that the court of exchequer do cause the said account to be taken, and what shall be found due thereon, to be paid accordingly.

And upon reading the said order of the house of lords, and hearing counsel for all parties,

IT IS THIS DAY ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the said defendants shall account with the plaintiff for the tithes of the mills aforesaid, according to and in pursuance of the directions of the said order of the house of lords, as by the said order is directed (a).

(a) See *Grimley v. Tawlkington*, 1. Show. 281. *Carth.* 215. 4. *Mod.* 45. *Dodson v. Oliver*, *Bunb.* 73. *Chapman v. Barton*, *Bunb.* 184. *Carleton v. Brightwell*, 2. *Peer. Wms.* 463. *Donald v. Lowther*, 2. *Bar. K. B.* 336. and the cause of *Hall v. Machet*, in the exchequer, in *Easter Term* 37. *Geo. 3.* *Apstruther's Reports*, vol. 3. page 915.

HOCKMORE *against* RICHARDS.

TRIN. TERM,
5. Q. ANNE.

Devonshire, 20th June 1706.

THE plaintiffs, on behalf of themselves and the rest of the parishioners of the parish of *Combintinhead*, in the county of *Devon*, filed their bill against the rector of the same, stating the following immemorial customs within the parish; that every owner or occupier of arable land, meadow, and pasture ground, ought to set out for the rector, for the tithes of his corn and grain, the tenth sheaf of wheat, rye, and beans, and the tenth score of barley, oats, and pease, and for the tithes of all grafs cut and mowed within the said parish, the tenth cock of hay; the tenth of all apples and pears, either by the bushel, peck, or other certain quantity; to pay yearly at *Easter* one penny for the tithe milk and white sole, of every cow milked by such owner or occupier within the said parish, and one farthing for the milk of every ewe milked, and one penny for every calf, fallen or reared, and also the tenth part of the price for which every calf fallen therein has been sold by such owner or occupier; and also eightpence for every colt foaled, and one penny, in lieu of the tithes of all wood, furze, and brovaie rooted, cut, burnt, sold, or otherwise disposed of; also one penny, called a garden penny, in lieu of tithes of all garden herbs, roots, stasse, and fruits, which he has used in his respective houses, and if sold, then the tenth part of the price the same were sold for; and for the tithe of eggs of all his tame fowl, twopence; and that every inhabitant within the said

The several modes of paying tithes in the parish of *Combintinhead*, in the county of *Devon*, set forth and established.

HOCKMORE
against
RICHARDS.

said parish, of the age of sixteen years and upwards, have used, and ought to pay, yearly at *Easter*, twopence for an *Easter* offering; that all other tithes, both great and small not before mentioned, are due and payable in kind to the rector, according to the common law and statutes of this realm. The bill therefore prayed, that the defendant might answer and discover the truth of all and every the matters aforesaid, and that the said customary rates and payments might be established by the decree of this court, to prevent any disputes concerning the same for the future, and to be relieved in the premises.

The defendant said, that he was willing to comply with the customs and usages of the said parish, and doth hereby submit thereunto, and desire, that they may be established by the decree of this court.

The cause came on to be heard on the bill and answer.

IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the several and respective customs and usages, in the bill set forth, shall be and are hereby established against the defendant, according to the prayer of the said bill, and the submission, and consent of the defendant in his answer, and shall be observed and complied with accordingly.

TRIN. TERM,
5. Q. ANNE.

HOLLAND against COKER, BAKER, and Others.

Somersetshire, 22d June 1706.

The plaintiff
states his title to
the rectory of
Lamiatt, in the
county of *Somerset*.

THE bill stated, that in the year 1687, *E. Coker*, clerk, was rector and incumbent of the parish of *Lamiatt* in the county of *Somerset*, and that, in the said year, *J. Berjew*, being rector of *Kingston Deverell*, in the county of *Wilts*, died, whereby the rectory of *Kingston Deverell* became void, and was in the gift of the bishop of *Salisbury*; that about *Christmas* 1688, the said *E. Coker*, having no dispensation from THE CROWN, or the then *Bishop of Bath and Wells*, or any other way as the statutes direct, he the said *Ludlow* did at that time receive institution and induction from the *Bishop of Sarum*, for the rectory of *Kingston Deverell*, whereby the rectory of *Lamiatt* became void, and lapsed to the late *Bishop of Bath and Wells*, who not presenting in time, the same lapsed to the *Archbishop of Canterbury*, and by his default became lapsed into her majesty's hands; that in the month of *July* 1704, the rectory being so lapsed to THE CROWN, the plaintiff obtained a grant or letters patent of the said rectory, from *Sir N. Wright*, the lord keeper of the great seal of *England*, which being obtained, the plaintiff in *December* in the said year produced it to the now *Bishop of Wells*, who in the said month granted institution and induction of the said rectory of *Lamiatt* to the plaintiff, who entered thereon, and had

had two elm trees there growing felled down, and therewith repaired the said parsonage house, &c. and did read all the articles of the church of *England*, paid the first fruits and offerings, and did all matters requirable of him, according to the canons of the church of *England*; that he being so entitled to the premises about the twenty-fifth of *March* 1705, did let the said rectory, &c. to *T. Stone*, and thought he and his tenant would have had peaceable and quiet possession thereof, but that the defendant *Coker* pretends title thereto as patron, and in conjunction with the said *E. Coker*, in his lifetime to have sold the same to the defendant *Baker*, who combining with the other defendants, the defendant *Baker*, did in 1704, let part of his estate in *Lamiatt* to the defendant *Sutton*, and received from her fifty shillings for the tithes thereof, and in the said year the defendant *Baker* did demand the said tithes of the rectory for that year, and cut down several timber trees, and converted the same to his own use, and hath kept and detained the tithes from the plaintiff to a great amount, and with the other defendants, hath brought his right into the king's bench to be tried, therefore they refuse to come to any account, or pay the plaintiff any satisfaction for his said tithes, or for damages done to the said rectory; and he prayed an account of the same.

HOLLAND
against
COKER,
BAKER,
AND OTHERS.

The defendants said, that *E. Coker* was rector of the said parish of *Lamiatt* in the year 1687; that they knew not when *J. Berjew* died, but believed by his death the church of *Kingston Deverell* became void, as in the bill is set forth, and also that the plaintiff entered into the parsonage of *Lamiatt*, in the year 1704, and was possessed of the same, but knew not that such his possession was lawful, nor other than as a trespasser, and believed, that he did let the same as in the bill is set forth; that before the pretended institution, the defendants, or one of them, is, and hath been, and yet are, or is seised in fee of the advowson of the church of *Lamiatt*, and being patron thereof, is entitled to nominate and present a clerk to the said church when void.

The defendants
deny the plain-
tiff's title.

The defendant *Baker* said he let most of his lands to *Sutton*, as in the bill is mentioned, and that he did detain the tithes from the plaintiff.

The defendants said they knew not of any grant other than what make out the title of the defendants, or one of them, to the said advowson, and the said demise by *E. Coker* to the defendant *Baker*, which was a legal conveyance of the said rectory.

The defendant *Coker* said, that he never had any titheable matters in the said rectory, nor any tithes paid to him, and insisted that he is not accountable to the plaintiff, if he had a right, which the defendant insisted he had not.

HOLLAND
against
COKER,
BAKER,
AND OTHERS.

The defendant *Baker* insisted that he is not accountable to the plaintiff for any tithes, he having no title thereto, nor did the plaintiff ever request the same.

The defendant *Coker* said, he had brought a *quare impedit* against the *Bishop of Wells* and the plaintiff, in order to try the right of patronage or presentation to the church of *Lamiatt*, and hoped it is lawful for him to proceed therein, being advised the plaintiff is not rector or incumbent of the church.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the bill and the answer, and hearing what was offered by counsel on both sides, and upon debate of the matter, and mature deliberation had,

The bill dismissed.

IT IS ORDERED BY THE COURT, that the said defendants shall and do hereby stand dismissed of and from the said bill and the matters and things therein contained, with moderate costs, to be taxed by the deputy remembrancer of this court.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

MICH. TERM,
5. Q. ANNE.

INNES against DARBY.

Kent, 7th December 1706.

The plaintiff states, that he was appointed curate of the parish of *Maidstone*, in *Kent*; and that the archbishop of *Canterbury* augmented his salary by a lease of the vicarial tithes of the borough of *Week and Stone*, by which he is entitled to the small tithes of the hamlet of *Loddington*, in the said borough of *Stone*.

THE bill stated, that the plaintiff, being a licensed preacher, was, about *April 1692*, appointed curate of the parish of *Maidstone*, in the county of *Kent*, by the then *Archbishop of Canterbury*, and hath been curate ever since, being continued curate there by the present *Archbishop of Canterbury*, who is seised of the appropriate rectory of *All Saints*, in the said parish, being parcel of the possessions of the archbishoprick of *Canterbury*; that for the better maintenance of the plaintiff in the said cure, the *Archbishop of Canterbury*, by indenture of lease, the seventeenth of *May 1692*, made between him and the plaintiff, reciting, that there were but twenty pounds a-year allowed to the curate as a pension, did grant, and to farm let to the plaintiff, all the tithes whatsoever of the boroughs or towns of *Week and Stone*, in the said parish of *Maidstone*, called the *vicarage tithes*, without rent, for the plaintiff's supply, all which said tithes were formerly, by the former archbishops, allowed to the plaintiff's predecessors; that the plaintiff, as curate there, not only by virtue of the said demise, but by the law of the land, ought to have the tithes of hay and other small tithes within the said boroughs and towns of *Week and Stone*, and ought to be paid the, same yearly in specie, or some composition for the same; that the defendants have, for several years past, occupied lands in the town fields or hamlet of *Loddington*, in the said borough of *Stone*, and parish of *Maidstone*, and have had yearly quantities

quantities of hay, and have depastured milch cows, sheep, bullocks, and other cattle, and have also had flax, hops, and fruit, for which the said defendants ought to have paid the plaintiff his tithes, or some composition for the same, which they had refused to do. The bill therefore prayed, that the said defendants may make a full discovery of the premises, and account with the plaintiff for what is due to him.

INNES
against
DARBY.

The defendants denied, that the plaintiff was appointed curate of *Maidstone*, by the late *Archbishop of Canterbury*, or that he was continued by the present archbishop, as in the bill is mentioned, but believed that he now officiates as curate; they also denied the indenture of demise by which he claimed tithes as aforesaid, and said, that if the plaintiff hath any such lease from the present *Archbishop of Canterbury*, he is thereby restrained from demanding the tithes mentioned in the lay tenants lease, which are not intended to be let to the curate. They said that they believed the impropriate rectory of *Maidstone*, belongs to the *Archbishop of Canterbury*, but they knew not that the same was called *All Saints*, nor what tithes thereof were granted to the plaintiff, or his predecessors, and that if they were so granted, the plaintiff is in no way entitled to tithe hay, or other small tithes in the hamlet of *Loddington*, they not being mentioned in the lease, and *Loddington* not being in or part of the borough of *Week or Stone*; that the said tithes of *Loddington* were never enjoyed by the plaintiff, or his predecessors, it being a distinct vill and liberty, and that the tithes have always been enjoyed by the archbishop's lessees. They also said that *William*, the late *Archbishop of Canterbury*, by indenture, dated the twenty-seventh of *September* 1688, granted the said tithes, for twenty-one years, to *B. Hatley*; that the same were let by the present; that the lessee had assigned the same to *T. Bliss*, and that they were always enjoyed by the lessees and not by the curate; and believed, that the plaintiff takes advantage of an omission of tithe hay in the lease. They denied that they knew that any part of *Loddington* is within the borough of *Stone*, but said, that it is separated from it by *Coxbeach*, and the parishes of *Loose* and *Boughton Monkelsea*, and part of *East Farley*, and that part lies in *Marden* parish, and that that part which is in *Maidstone* parish, was united thereunto long since, and is distinctly assessed. They said, that they believed that *Stone* and *Loddington* are served by the same borough holder; that they have always compounded for their tithes, both great and small, and cannot set forth the quantities and values thereof; but that they have paid the archbishop's lessee yearly as followeth, viz. the defendant *Darby*, thirty-five shillings, *Watkins*, six pounds, *Amburst*, four pounds, two shillings, and sixpence, or four pounds, fifteen shillings, *per annum*. They denied that any part of the said tithes belonged to the plaintiff, or that the hay or other small tithes in *Loddington* were ever called or known by the name of the vicarage tithes, or ever were enjoyed by the plaintiff

The defendants say, that the plaintiff is not entitled to the tithes of *Loddington*, because it is not expressly included in the lease, it being a distinct hamlet;

and no part of the borough of *Stone* in the parish of *Maidstone*;

and that they have always paid tithes to another lessee.

INNES
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DARBY.

plaintiff or his predecessors, or that there was any settled composition for the small tithes; but said, that they had from time to time agreed with the then lay parson, his farmer, or undertenants as they could.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides, and the cause came on to be heard on the twenty-ninth of *November* last, and on reading the licence of his grace, *John*, late *Archbishop of Canterbury*, for the plaintiff's curacy of the parish of *Maidstone*, and the grant of tithes made by the said late *Archbishop* to the plaintiff, and reading several depositions on the plaintiff's part, the further hearing was adjourned until the sixth and seventh of *December* instant, when upon reading several indentures and leases made, by the former archbishops, of the tithes of the said parish of *Maidstone*, and the depositions of witnesses on both sides, and upon hearing what was alledged by counsel on both sides,

The archbishop
need not be a
party to the bill.

THE COURT was of opinion, that the plaintiff remains curate, and has a right to demand what is leased to him, without making the *Archbishop* a party.

An issue to try
whether *Lodding-*
ton is part of
Stone.

But THE COURT directed an issue, wherein the said plaintiff is to be plaintiff, to try, "Whether the town fields and hamlet of *Loddington*, or any and what part thereof, being in the borough of *Stone*, is in the parish of *Maidstone*?" and on the trial a verdict was given for the defendants; but when the cause came on to be heard on the *postea*, the plaintiff prayed a new trial, and MR. BARON SMITH having, pursuant to an order made the second of *May*, spoken with the judge who tried the same, and who declared himself dissatisfied with the verdict, and that it was proper for a new trial, the Court granted a new trial upon the former issue, and by a special jury, the plaintiff to pay the defendants their costs for the last trial, to be taxed by *Mr. Marriot*, (the deputy being dead).

A new trial
granted.

A new trial was accordingly had by a special jury, and a verdict thereupon was given for the plaintiff.

The cause now, on the twentieth of *November* 1707, coming on for further directions on the equity reserved,

The Court of o-
pinion, that the
plaintiff is curate,
and entitled to
the tithes of *Lod-*
dington.

THE COURT, upon long debate of the matter, and hearing what was alledged on both sides, was of opinion, that the plaintiff, as curate of the parish of *Maidstone*, is duly entitled to tithes of hay and small tithes increasing and renewing in the town fields and hamlet of *Loddington*, (except hops), for the several and respective years charged in the said bill.

IT IS ORDERED AND DECREED, that the defendants shall respectively pay to the plaintiff, the tithes of their hay and all their small tithes arising, &c. in *Loddington*, and the precincts thereof (except hops), for the time demanded by the bill; and

it

It is referred to the deputy remembrancer to take and report the said account.

EDW. WARD.
THO. BURY.
RO. PRICE,

INNES
against
DARBY.

TRUSTRAM *against* BEAUMONT.

Bedfordshire, 6th February 1706,

HILARY TERM,
S. Q. ANNE.

THE scope of the bill was to demand fourpence an acre yearly, for a parcel of meadow land called *Low Mead*, containing two hundred acres, in the parish of *Westoning*, in the county of *Bedford*.

The large meadow called *Low Mead*, in the parish of *Westoning*, in *Bedfordshire*, pays a *modus* of 4d. an acre yearly, to the impropiator in lieu of tithes.

An issue was directed to try, “Whether a *modus* of fourpence an acre yearly hath, time out of mind, been paid to the impropiator of the rectory of *Westoning*, aforesaid, or his farmer, for the time being, in lieu of all tithes arising in the said mead, called *Low Mead*, or not?” and on the trial a verdict was given for the plaintiff, in affirmance of the *modus*.

THE COURT therefore ordered the defendant to account with the plaintiff for the arrears of the said *modus*,

DEAN AND CHAPTER OF WORCESTER *against*
SEABRIGHT and Others.

Worcestershire, 22d February 1706.

HILARY TERM
S. Q. ANNE.

THE bill stated, that the dean and chapter of *Worcester*, being seised, in right of their church to them and their successors, of the impropriation or rectory of *Saint Peter*, in the city of *Worcester*, and of all tithes of corn, grain, and hay arising within the said parish, and the titheable places thereof, and of all tithes of herbage, grass, agistments, and feedings, yearly within the said parish, and all other tithes and profits to the same belonging, they, by their indenture, dated the twenty-fifth of November 1695, demised to the plaintiff *Stokdale* all the said tithes and profits arising within the said parish, as well within the said city as without, (except as in the said indenture is excepted) for twenty-four years, under a considerable yearly rent; that *Sir Edward Seabright* was, at his death, seised for life, or other estate of inheritance, of the manor of *Battenhall*, and of divers messuages, farms, and lands thereto belonging, situate in the said parish of *Saint Peter*, of the yearly value of three hundred pounds; that the defendant *Dame Ann Seabright*, his widow, became seised of the premises for life, as part of her jointure, the reversion descending to the defendant *Sir T. S. Seabright*, an infant, the son and heir of the said *Sir Edward Seabright*; that

The lessee of the dean and chapter of *Worcester* of the tithes of the impropriate rectory of *St. Peter*, in the county of *Worcester*, claims tithes in kind of *Battenhall Park*, and *Whittington Farm*.

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that the other defendants did, for several years past, hold several messuages, farms, and lands within the manor and parish, by leases from the said *Sir Edward Seabright*, and his ancestors; that they, and all the farmers of the said farms, did, many years before 1701, pay to the plaintiff *Stockdale*, or those under whom he claimed, full tithes of corn, grain, hay, herbage, grass, and agistment yearly arising on the said farms, or the greater part thereof, or compounded for the same; that the undertenants of the defendant *Hurdman*, in the said years, reaped, mowed, cut, and carried away great quantities of all sorts of corn and hay, and fed several barren and unprofitable cattle, the tithes whereof belong to the plaintiff *Stockdale*.

The defendant
Seabright, con-
fesses possession
of the Park.

The defendant *Dame Seabright*, and her son, admitted the plaintiff *Stockdale's* title, and confessed, that *Sir Edward Seabright* was seised of the said manor, and of divers farms and lands lying in the said parish, and that he died seised thereof; that, on his death, she became seised of the same for her life, as part of her jointure, and that the reversion was vested in her son.

The defendants
Ellsmere, Gold,
Rogers, and
Hampton, say that
the lands they
hold are parcel
of the Park, which
belonged to the
priors of *Makes*,
and is tithes free.

The defendants *Ellsmere, Gold, Rogers,* and *Hampton*, said, that they severally held, in the said years, several messuages, farms, and lands, part of the said manor, within the said parish of *Saint Peter*, as tenants thereof, and set forth their several holdings; that they knew not what tithes were paid before the year 1701, but that if any were paid they were paid wrongfully, for that no tithe was due for any part of the premises in their possession, for that there was anciently within the said manor of *Battenhall*, a park called *Battenhall Park*, and when imparked extended itself, (as set forth in their answer); that it was a large park, and that all the defendants' farms were included therein; that the said park formerly belonged to the priory of the *Monks of Worcester*, and was held by them exempt of all tithes, except sixteen shillings and eightpence, paid to the vicar of *Saint Peters*, which they suppose to be a *modus* in lieu of tithes; that the said priory, being one of the greater priories, came to *King Henry the Eighth*, by virtue of the statute of the 31. *Hen. 8. c. 13.* and was held by his majesty, and those claiming under him, *tithe free*, except the said money to the vicar; that *King Henry the Eighth*, by his letters patent, on the twenty-fourth of *March*, in the thirty-sixth year of his reign, granted the said manor and park to *J. Bairne* and his heirs for ever, and all tithes, oblations, and obventions, to the said manor and lands belonging, which, by mesne conveyances, came afterwards to the ancestors of the said *Sir Thomas Seabright*, and so to the said *Sir Edward Seabright*, who settled it on the defendants as aforesaid, and that the said park ground ought to be held, since the dissolution of the priories, exempt from all tithes; that in former disputes at law, touching the payments of the said tithes, betwixt the

the impropiators and occupiers of the said lands, on the statute of *Edw. 6.* the said farmers were always proved to be exempt from tithes, and had verdicts in affirmation of such exemptions; and that if any tithes had been since paid they were paid by mistake, arising from an ignorance of the extent and boundaries of the said park, which, since the disparking thereof, had been changed by the walling of several inclosures; and that they were willing to try the boundaries at law, and whether the defendant's farms ought not to be tithe free.

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The defendants *Ellsmere, Gold, and Rogers* confessed that they held, in the said years, several farms, part of the said manor, as tenants, and that *Whittington Farm*, part of the said manor, paid tithes; but insisted, that as the farms they held were part of *the Park*, they were tithe free, both before and since the dissolution, and that no *modus* was now paid in lieu of tithes, except what was paid to the vicar.

But say, that
Whittington Farm
is liable to tithes.

The defendant *Ellsmere* said, that upon his first entering on his said farm tithes were paid thereout by mistake, and also of another farm held by *Rogers*, the same having been out in lease since 1652; and the defendants set forth the quantities and values.

That tithes were
formerly paid by
mistake.

The defendants *Hurdman and Hampton* believed that the said dean and chapter, &c. were impropiators of the said rectory, and that they had leased the tithes thereof to the plaintiff *Stockdale*.

The defendant *Hurdman* said, the farms were looked upon as part of the manor of *Battenhall*, lying within the said parish, and for generations had belonged to the *Seabrights*; that *Sir Edward*, grandfather of the said *Sir Edward*, by indenture dated the twenty-seventh of *April* 1652, demised to one *Branch* all those lands now in the possession of the defendants *Hampton and Rogers*, to hold for three lives; that the defendant *Hampton* had held the same for forty-four years past, and now holds under the defendant *Hurdman* part of the said lands; that the defendant *Rogers* rented another part thereof; that the plaintiff *Stockdale* rented the rest; that no mention was made that they were to be held tithe free, nor did he pretend to let the same tithe free; and he believed that they ought to pay tithes to the dean, &c.

The defendant *Hampton* said, that he had lived forty-six years within the manor of *Battenhall*, and for forty years had held part of the lands demised to *Bromball*, and had all along set out his tithes of corn, grain, and hay to the dean and chapter, or to their lessee, or compounded for the same, and that he had never insisted that the said lands were tithe free.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading a patent dated the twenty-fourth of *March*, in the thirty-sixth year of *Henry*

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AND OTHERS.

Henty the Eighth, to *J. Brown*, and a copy of the record of a verdict of *Hilary Term*, in the thirteenth year of *James the First*, and an exemplification of a verdict the thirteenth of *June*, in the fourteenth year of *James the First*, between *R. Hall* and *T. Green*, relating to the tithes in question, and the depositions taken in the said cause, and on full debate,

Certain lands decreed to be tithe free.

IT IS ORDERED AND ADJUDGED, that the said bill, as to the demand of tithes for the several lands following, *viz. Bannutt Tree Hill*, two closes called *Forty Acres*, *Cow Leasow* and *Ley*, *Two Birch Closes*, *Greenhill*, two closes called *Barn Close* and *Morres*, *Slingett Close*, a close next the house in the defendant *Ellsmere's* possession, the *Three Conduit Closes*, a close called *the Orchard*, *the Leasow* before the houses, *Dirty Conduit Close*, three meadows, called *the Ower Middle* and *Lower Meadow*, a close formerly called *the Cow Pasture*, of about thirty acres, and lying between the commonett closes and *the Leasow* before the house of the defendant *Gold*, shall be, and is hereby dismissed without costs.

AND IT IS FURTHER ORDERED, that the defendants the *Seabright's* be, and are hereby also dismissed without costs

And that the defendants *Hurdman* and *Hampton* be, and are hereby dismissed with costs to be taxed, they having paid all their tithes.

AND IT IS FURTHER ORDERED, that the defendants *Ellsmere*, *Gold*, and *Rogers* do severally account with and pay to the plaintiffs for the tithes arising on their lands in *Battenhall* in their several occupations, not before mentioned to be dismissed and due to the said plaintiffs for the time in the said bill; and it is referred to the deputy to take the said account.

TRIN. TERM,
6. Q. ANNE.

SAUNDERS *against* DEWE and Others.

Gloucestershire, 15th July 1707.

The vicar of *South Cerney*, in *Gloucestershire*, claims tithes of hay, and agistment of the second crop.

THE vicar of *South Cerney*, in the county of *Gloucester*, claims, by immemorial custom, the tithes of milk, hay, and herbage for the feeding and depasturing of dry, barren, and unprofitable cattle, other than in and upon a farm called *Wyes Farm*, upon any meadow or pasture ground within the said parish (*Wyes Farm* excepted), although such ground hath been mowed in the same year for hay, and also twopence in the pound for the agistment of great numbers of oxen, and other dry, barren, and unprofitable cattle belonging to strangers, or some other satisfaction for the same.

The defendants insist on several *modus*es.

The defendants insisted on several *modus*es in lieu of tithes payable to the plaintiff; *viz.* for a milch cow, threepence; for a heifer, of the first year's milk, three halfpence; and sixpence for

for every dry beast; the tenth calf in kind; for every cow and calf fold, fixpence, and if under seven calves the tenth penny for every calf fold, and if any person kill a calf in his own house, the left shoulder to the vicar.

SAUNDERS
against
DEWE
AND OTHERS.

The defendants *Dewe, Eldridge, Skinner, and Stephens* said, that the meads called *Broad Mead Stream, Cran's Mead, Mead Leaze, and Wildmore*, were parcel of the monastery of *Saint Austin*, near *Bristol*, and discharged of tithes. and say, that the *Steane Meads* are exempt from tithes.

The defendants *Eldridge, Fitcher, and Dowswell* said, that the meads called *Boxwell, Widden, Tavindy, Wilmore*, and the two acres in *Thames Meadow*, were parcel of the monastery of *Braddenstock*, in the county of *Wilts*, and *Lanthony*, in the county of *Gloucester*, or one of them, and as such discharged of tithes.

All the defendants believed, that there is an exemption from payment of tithes of the said meads, they being parcel of the meads called *Steane Meads*.

THE COURT, on the reading of the proofs, ordered all the defendants to pay the several respective agistment tithes of cattle taken in by agistment, and for their own dry, barren, and unprofitable cattle. The tithes of agistment decreed.

And the Court also directed an issue to try, whether the lands called *Steane Meads* be discharged of the payment of tithe hay to the plaintiff, as vicar of *South Cerney*, by the dissolution of monasteries, or by any other legal discharge; and the jury, which was special, found that they were not discharged from tithe hay to the plaintiff, as vicar of *South Cerney*. An issue directed to try, whether *Steane Meads* are tithe free.

THE COURT therefore ordered the defendants to pay to the plaintiff their several and respective tithes of hay for the grounds called *Steane Meads*. The tithes of *Steane Meads* decreed.

DEAN AND CHAPTER OF HEREFORD against SYMONDS and Others.

TRIN. TERM,
6. Q. ANNE.

Herefordshire, 9th July 1707.

THE bill stated that the dean and chapter of *Hereford* are seised in fee of the manor of *Canon's Bakehouse*, in the city of *Hereford*, and elsewhere in the said city, and of all the rights, members, and appurtenances thereto belonging; that they have, time out of mind, received divers rents, pensions, parts, and portions of tithes, or else several quantities of wheat, rye, and oats in lieu thereof, from several messuages, lands, and hereditaments, prebends, rectories, parishes, and vills within the parish of *Moreton Magna*, and to a rent of 19s. yearly from the occupiers of *Alford's Lands*. The dean and chapter of *Hereford*, as lords of the manor of *Canon Bakehouse*, are entitled to fifty-six bushels of wheat and twenty-eight bushels of oats yearly from 11d. yearly from

the

DEAN AND
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HEREFORD
against
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the said manor yearly from the tenants and occupiers of the said parishes, and particularly a rent of one shilling and elevenpence issuing yearly from a messuage and lands called *Alford Lands* in the possession of the defendant *Symonds*, lying in the township of *Huntington*, in the parish of *Holmer*; and also another rent of one pound, two shillings, and twopence, issuing yearly out of another messuage and lands there, formerly called *Blunt's Lands*, now enjoyed by the defendant *Phillips*; and also out of the tithes of the parish of *Moreton Magna*, otherwise *Moreton upon Lugg*, yearly fifty-six bushels of wheat and twenty-eight bushels of oats from the incumbent of the said parish, until the present incumbent the defendant *Powell* refused to pay the same.

The defendant *Symonds* denied all knowledge of the plaintiff being seised of the said manor, and said, that the defendant *Elizabeth Symonds* had lately purchased several free and copyhold lands in *Huntington* aforesaid, which she had since settled on the defendant her son, and that part of the said copyhold lands are surrendered to her by the name of *Alford Lands*, out of which there is due to the prebendary of *Huntington*, as lord of the manor, a yearly chief rent of fifteen shillings and tenpence, which is the only rent or pension these defendants ever knew were payable out of the said lands.

The defendant *Phillips* said that he knew not that he, his father, or grandfather, or any of his ancestors, ever held any messuage or lands called *Blunt's Lands*, but said, that he is seised of a messuage or lands in *Huntington*, which they had held many years, but had never heard that any of his ancestors ever paid the yearly rent of one pound, two shillings, and twopence, or any other rent issuing out of the said estate to the plaintiffs or their predecessors, or to the collectors of the *Canon Bakehouse* rents, or to any other person to their use.

The defendant *Powell* said that he knew not that the plaintiffs are seised of the manor of *Canon Bakehouse*, and that he is, and for about twenty years past hath been, rector of the parish of *Moreton Magna*, and hath ever since enjoyed the same, with the tithes thereto belonging, and believed that there are not fifty-six bushels of wheat and twenty-eight of oats, or any other quantity yearly issuing due or payable out of the tithes of the said parish to the plaintiff, as lord of the said manor of *Canon Bakehouse*.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading several rentals belonging to the plaintiffs, and several depositions taken in the cause, and on full debate, the Court directed a trial at law upon these issues.

FIRST, Whether there is, and anciently hath been, a yearly rent or sum of one shilling and eleven pence due and payable out of lands called *Alford's Lands*, in *Huntington*, in the parish of *Helmer*, in the city of *Hereford*, to the plaintiffs, and whether the defendants *T. Symonds* and *E. Symonds*, or either of them, are in possession of those lands, or any part thereof.

DEAN AND
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SECONDLY, Whether there is, and anciently hath been, any yearly rent or sum of one pound, two shillings, and twopence issuing out of, or payable to the plaintiff for lands formerly called *Blunt's Lands*, in *Huntington* aforesaid; and whether the same, or any part thereof, are in the possession of *J. Phillips*.

THIRDLY, Whether there is payable to the plaintiffs yearly out of or for or in respect of the rectory of *Moreton Magna* by the defendant *R. Powell*, fifty-six bushels of wheat and twenty-eight bushels of oats, or any other, and what quantity yearly.

A trial was accordingly had, and the jury, as to THE THIRD ISSUE, for the fifty-six bushels of wheat and twenty-eight bushels of oats, gave their verdict for the plaintiffs.

And as to THE FIRST AND SECOND ISSUES, the jury gave their verdict for their defendants. But a new trial was ordered on the plaintiff's motion, upon payment of costs upon the said two issues; and upon the said trial the jury, as to THE SECOND ISSUE for one pound, two shillings, and twopence, issuing out of or payable to the plaintiffs for lands formerly called *Blunt's Lands*, gave a verdict for the defendant *J. Phillips*; and as to THE FIRST ISSUE, of one shilling and eleven pence issuing out of or payable to the plaintiff for lands called *Alford's Lands*, the jury gave their verdict for the plaintiffs.

THE COURT therefore ordered, that the bill be dismissed, as to the defendant *J. Phillips*, with costs to be taxed; that the defendants the *Symonds's* shall pay to the plaintiffs the rent of one shilling and eleven pence *per annum* charged upon the lands called *Alford's Lands*, with costs to be taxed by the deputy remembrancer, who is to compute and state the said rent of one shilling and eleven pence *per annum*, and the arrears thereof, and to make his report.

EDW. WARD.
THO. BURY.
RO. PRICE.
S. LOVELL.

MICH. TERM,
6. Q. ANNE.

BULMER *against* BIRCHAM and Others.

Norfolk, 9th December 1707.

The impropriator of *Graftwick*, in the county of *Norfolk*, claims the tithe of corn and hay for *Furr Close*, *Callas Close*, *Milker's Meadow*, and *Greengate Lands*, and states a decree of the tithes of *Greengate Lands*.

THE bill stated, that the plaintiff was seised in fee of the rectory impropriate of *Graftwick*, in the county of *Norfolk*, and entitled to all manner of tithes of corn, hay, and other predial tithes arising yearly in the said parish; that the defendants, for several years past, had been farmers or owners of divers lands in the said parish, which they had sowed and reaped, and had thereon great quantities of hay, for all which they had set out no tithes, or made any composition; that the plaintiff, about seven years ago, obtained a decree in this court (a) for tithes against the farmers and occupiers of *Furr Close*, *Callas Closes*, and *Milker's Meadow*, and against the defendant *Athill*, then owner of *Greengate Lands*, all which were part of the lands now occupied by the defendants; that the said defendants, with the defendant *Newman*, owner of the above three closes, pretend that the said lands are exempt from tithes to the impropriator, and that only small sums of money in lieu thereof, on an ancient endowment of the vicarage or as composition for the tithes of the said premises, are payable to the vicars; and that in pursuance of such endowment, the defendant's predecessors, owners of the said closes, had, time out of mind, paid to the former and present vicars there yearly on *Lanmas Day* as follows, viz. for *Great Furr Closes*, four shillings; for *Callas Close*, thirteen shillings and fourpence; for *Milker's Meadow*, eightpence; and for *Greengate Lands* twelve shillings and fourpence, in full for all tithes then issuing out of the same, payable to the impropriator or vicar; that on a trial at law, on several issues directed out of this court, in a cause depending between the plaintiff and the defendants (b), the same sums were found to be paid in full satisfaction, and the bill was dismissed, although the plaintiff, by his bill, averred that such payments were for the herbage of those lands as part of the profits with which the said vicarage

(a) This decree was made on the 20th July 1698, in Trinity Term, 10. Will 3. in the cause of Bulmer v. Athill and Durant. The plaintiff, as lay impropriator of *Graftwick*, claimed the tithes of hay and corn for *Greengate Lands* and the *Four Acres*. The defendant *Athill* appeared and answered, but *Durant*, though obliged to appear gratis, made default. The Court, on opening the bill and *Athill's* answer, no counsel appearing for *Durant*, decreed *Athill* to account for the tithes of the corn growing on the farm called *Greengate Lands*, ex-

cept the *Four Acres* mentioned in the answer, for all the time that he had been occupier thereof, and also for hay cut and carried away within the said time. The like account *visi* was also decreed against *Durant* for his tithes of corn and hay, on payment of 5l. costs of the day. But the account against *Athill* was ordered to be taken without prejudice to any right he might claim to have for the time to come.—Book of Decrees and Orders.

(b) See Bulwer v. Newman, Trin. 12. Will. 3. ante, page 397.

herbage

was endowed, and were known by the name of the *customary tithe herbage*, which would appear by some receipts of the defendant *Newman's*, if produced, for want of which the jury was induced to find such payments to be in full of all the tithes of the premises; and that such dismissal was to be without prejudice to the plaintiff's right. The object of the bill therefore was, to compel the defendants to account for and pay their tithes.

BULMER
against
BIRCHAM
AND OTHERS.

The defendant *Bircham* admitted the plaintiff was seised of the said impropriation, but not that he was entitled to the tithe herbage of corn and hay of *the Great Furr Closes*, and said that he had mowed part of the same and had fed the rest. He acknowledged that he had neither set out the tithes thereof nor compounded for the same, for that there was a vicar endowed within the said parish entitled to customary payments in lieu of tithe herbage, hay, corn, and other tithes; that he, the defendant, and all other owners of the said land, have immemorially paid to the vicar, at *Lammas*, yearly four shillings, as a *modus* in full of all herbage tithe, tithe corn, and hay, and other tithes issuing out of the said *Furr Closes*; that he had annually paid the same, since he farmed the land, to the vicar, in full of all such tithes, and that the owner informed him they were free from tithes in kind; that the plaintiff, about seven years since, brought two actions against the defendant and the defendant *Bullen* for tithe corn and hay in kind of the premises, and that although both causes were ready for trial, the plaintiff did not think fit to try the same. He believed that a decree was obtained by the plaintiff as is stated in the bill, but that it was through a mistake in the defendant's answer; and he insisted that the same sums of money are payable to the vicar in discharge of all tithes, and that there is nothing due to the plaintiff for the same, for that, on a trial at law on several issues directed out of this court, between the plaintiff and this defendant and others, the said sums were found to be paid in full satisfaction, and the bill was dismissed.

The defendant
Bircham says,
that *the Great
Furr Closes* have
always paid 4s.
a-year to the
vicar.

The defendant *Bullen* owned himself to be occupier of *Callas Closes*, and of two meadows called *Milker's Meadow*, and that he did not set out the tithes thereof, or compound for the same, for that he and all other farmers of the said lands paid the vicar yearly at *Lammas* for *Callas Closes* thirteen shillings and fourpence, and for *Milker's Meadow* eightpence, as a *modus* in lieu of herbage tithe, hay, and corn, and of all tithes whatsoever; that he had yearly paid the same to the vicar in full satisfaction for all tithes, due either to the impropiator or the vicar, and that the same were found on a trial at law as above stated.

The defendant
Bullen says *Callas
Closes* and *Mil-
ker's Meadow*
have paid 13s.
4d. and 8d. to
the vicar.

The defendant *Athill* confessed that he was owner and occupier of *Greengate Lands*, for which he had paid no tithe in kind, insisting on the said customary *modus* to the vicar (except for one inclo-

The defendant
Athill says *Green-
gate Lands* have
always paid 2s.
4d. yearly to the
vicar.

BULMER
against
BIRCHAM
AND OTHERS.

ture thereof of *four acres*), the tithe whereof, when sown with corn, was duly set out or compounded for. He said, that for all the other lands called *Greengate Lands* he and his predecessors, owners thereof, had yearly paid at *Lammas*, to the vicar of the said parish, twelve shillings and fourpence in full for all tithes payable to the impropriator or vicar out of the premises (except *the four acres*) ; that he had duly paid the vicar the said *modus* of thirteen shillings and fourpence, which was in full of all tithes ; that he had occupied the said lands twenty years, and had many considerable titheable matters thereon, yet neither the plaintiff, nor any of his lessees, had ever demanded tithes in kind of him (save for the said *four acres* when sown) till within ten years past the plaintiff filed his bill for tithes in kind, to which the defendant answered, and through mistake it was expressed that *the Four Acre Close*, when sown, paid tithes in kind in lieu of all the rest ; and though the defendant's witnesses proved that the twelve shillings and fourpence were paid to the vicar in full of all tithes, yet, by reason of that mistake, the court awarded the defendant to account for the tithe in kind ; but that the court was then well satisfied that the defendant's witnesses had fully proved the twelve shillings and fourpence, and therefore ordered, that the said decree should be without prejudice to the defendant or his successors ; that at a trial at law brought by the plaintiff for tithe in kind of the premises, as well for hay as for corn, the defendant proved the said *modus* to be in full of all tithes of the said lands (except *the Four Acres* when sown), and that a verdict was found for the defendant ; and that on a late trial on several issues out of this court, the defendant had another verdict, that the said payment was in full as aforesaid ; and that he had produced acquittances on the said trial from the vicar, which were in full for all tithes of the premises, except the *Four Acres*.

The defendant *Newman* admitted that the plaintiff was impropriator, and that he was owner of *Callas Closes*, *Milker's Meadow*, and *Great Furr Closes*, but had never occupied the same ; and he believed that no tithe was ever paid for the same, excepting the aforesaid *moduses*, and insisted on the said payments to the vicar to be in full of all herbage tithe, hay, and all other tithes issuing out of the premises.

Evidence read.

The plaintiff replied ; the defendants rejoined ; and several witnesses were examined on both sides ; and upon reading the proofs taken in the cause, and several receipts signed by *J. Clarke* and *J. Martin*, vicars of the said parish, and several orders and decrees made in former causes touching the matters in question, and also the *postea* of the verdict insisted on by the defendants in their answers, and upon full debate,

It

IT IS THIS DAY ORDERED AND ADJUDGED BY THE COURT,
that the said bill shall be, and is hereby absolutely dismissed.

EDW. WARD.

THO. BURY.

RO. PRICE.

J. SMITH.

BULMER
against
BIRCHAM
AND OTHERS.
Bill dismissed.

LLOYD *against* GREEN.

Surry, 6th November 1707.

MICH. TERM,
6. Q. ANNE.

THE substance of the bill was, to discover and recover the tithes of *Nonfuch Park*, in the rectory of *Cuddington*. The bill stated, that the plaintiff's father, deceased, had been, for fifty years past, and that the plaintiff, ever since the year 1703, as his son and heir, had been, and still is owner, farmer, and impropiator of the rectory, parsonage, or impropriation of *Cuddington*, otherwise *Quiddington*, in the county of *Surry*, and of all tithes and dues thereunto belonging, and of all tithes, dues, and duties whatsoever arising within the hamlets, vills, and fields of *Cuddington* aforesaid; that the ancestors of the plaintiff *Lloyd*, or the plaintiff *Roke* (a), as their lessee, had, during the time aforesaid, taken, enjoyed, and been in possession of the same; that by means thereof the plaintiff *Lloyd's* father ought, during his life, and the plaintiff ever since the death of his father, or the plaintiff *Roke*, as their lessee, to have been answered and paid all the said tithes and dues, or some rate, *modus*, or composition in lieu thereof; that the plaintiff *Lloyd's* father made his will, and left the plaintiff *Lloyd* executor thereof, who having proved the said will, is entitled to the arrears due in his testator's time; that since his father's death the plaintiff, or his lessee, had been entitled to all the tithes aforesaid; that the plaintiff *Roke* did, by parol lease, hold several of the tithes belonging to and arising within the said rectory and titheable places thereof, both from the plaintiff's father, and from the plaintiff since his father's death, for several years past; that the defendants, for twenty years past, have been, and still are inhabitants, occupiers, and possessors of several farms, lands, and grounds of great value within the said rectory, parsonage, and impropriation of *Cuddington* and the titheable places thereof, and ought to have paid the tithes thereof to the plaintiff as aforesaid, but which they had refused to do, pretending that

The plaintiff, as impropiator of *Cuddington*, in *Surry*, claims the tithes of *Little Nonfuch Park*; as executor to his father, from the year 1687 to the year 1703; and as impropiator on his own account, from 1703 to 1707.

S. C. Rayn. 114.

(a) In Michaelmas Term, 4 Anne, the present plaintiff *Lloyd* filed a bill against the defendant *Anne Green* to recover the tithes of *Nonfuch Park*. But on reading the deposition of *John Roke*, who claimed the same by lease from the proprietor of the rectory, the bill was dismissed with costs; but without prejudice to the plaintiff's right to the tithes.—MS.

LLOYD
against
GREEN.

they are abbey lands, and so discharged from tithes. The bill therefore prayed, that the plaintiffs may have a discovery thereof, and of the quantities, qualities, and values of the same.

The defendant *Ann Green* confesses she is in possession of *Little Nonsuch Park*, but says the same belonged to THE CROWN, and is tithable; that no tithes had been claimed for the same from 1687 to 1703, and that she has no assets to answer tithes for the first seven years demanded by the bill.

The defendant *Ann Green* confessed that she is, and for some time had been, by herself and tenants, possessed of ground called *Little Nonsuch Park*, which anciently was, and now is, the fee simple of THE CROWN, by a lease thereof made to her late husband by the *Duchess of Cleveland*, who claims some interest therein under THE CROWN; that the said land was freed and discharged of tithes, and had never paid any, although the greater part thereof had been ploughed many years before she came into possession thereof; that she had never heard of any such parish as *Cuddington*, nor that any part of the lands do lie therein, as in the bill is mentioned, but that the same did and do lie in the parish of *Nonsuch*, which did and doth extend itself beyond the said park; that the plaintiff's father had never molested her husband for the pretended tithes which the plaintiffs now claim; that the tithes within the manor of *Cuddington* are a portion of tithes granted anciently out of some particular lands, which were in THE CROWN long before, and since the time of *Queen Elizabeth*.

All the other defendants said, and insisted upon it, that the lands and grounds in their possessions, lying in *Little Nonsuch Park*, which they had been told are the lands for which the plaintiffs demand tithes, are some way or other discharged and exempt from the payment of all manner of tithes, and did never lie in any such parish as *Cuddington*, but did and do lie in the parish of *Nonsuch*; that they had kept no account of their respective tithes, nevertheless, to the best of their knowledge, they set forth the quantities, qualities, and values thereof, and insisted upon the exemption.

The defendant *Anne Greene* said, that she is administratrix to her late husband, deceased; that for seven years during his life time the said park was used for grazing, and that, if any thing was due, he died without assets thirteen years ago; and that she has no assets to answer any tithes for the first seven years demanded by the bill.

The bill retained
for a year.

The plaintiffs replied; the defendants rejoined; and several witnesses were examined; and on reading the proofs taken in the cause, and on debate, it is ordered by the Court, that the bill be retained; that the plaintiff *Lloyd* shall be at liberty to bring an action on the statute for not setting out the tithes; and that if he do not cause such trial to be had within a year (being not hindered by the defendants), the said bill shall stand dismissed.

In

In pursuance of the said order, an action was commenced, and tried; and upon reading the *possea*, it appeared that the plaintiff had recovered tithes in kind against the defendant *Anne Green* for the lands in question; but on hearing counsel on both sides, a trial at law was directed upon this issue, *viz.* “Whether the lands and grounds in the occupation mentioned in the defendant’s answer, or any, and which of them are in the parish of *Cuddington* and titheable places thereof, and titheable to the plaintiff;” on which trial, a verdict was found for the plaintiff, which exactly distinguished what lands or grounds were in the respective occupations of the several defendants, particularly in the parish of *Cuddington* and the titheable places thereof, and titheable to the plaintiff; and upon hearing counsel, and what could be alledged on either side, and on mature deliberation of the matter,

LLOYD
against
GREEN.

An issue directed to try, whether *Nonfuch Park* is in the parish of *Cuddington*, and liable to pay tithes to the plaintiff.

A verdict found for the plaintiff.

IT IS ORDERED AND DECREED BY THE COURT, that the said defendants shall severally and respectively account with, satisfy, and pay to the plaintiffs for their several respective tithes in kind due from each and every of them for *the first four years preceding the commencement of the suit (a)*, according to the proofs in the cause; *viz.* that the defendant *Anne Green* shall account for four hundred and fifty acres; the defendant *Goldsmith* for thirty-five; the defendant *Claverly* for four and a half; and the defendant *Furnace* for nine; all which said lands and grounds are, by the said verdict, found to lie in *Nonfuch Park*, within the parish of *Cuddington*, and titheable to the plaintiff *Lloyd* as proprietor thereof.

Tithes decreed for the first four years preceding the commencement of the suit.

It was accordingly referred to the deputy remembrancer to report the said account, which he did on the twenty-sixth of *November* last; and upon reading the said order and report, and no exceptions having been taken, it is ordered by the Court, on the eighth of *December* 1709, that the said report be confirmed, and that the defendants shall pay to the plaintiff the respective sums reported due from them for their tithes, amounting to two hundred and ninety-four pounds, four shillings, and eightpence.

EDW. WARD.
THO BURY,
RO. PRICE.
S. LOVELL.

(a) See the opinion of Lord Chief on this point of the case. Rayner, 114. Baron Dodd respecting the determination

MICH. TERM,
6. Q. ANNE.

PERN *against* FOUNTAIN.

Cambridgeshire, 4th December 1707.

The rector of *Leverington*, in the *Isle of Ely*. claims tithes of corn and coleseed, according as the same is carried away, either by *the sheaf* or by *the flock*, and says, he is intitled to notice when the same is set out.

THE bill stated, that the plaintiff had been rector of *Leverington*, in the *Isle of Ely*, in the county of *Cambridge*, since the year 1682, and, as such, was entitled to all predial and mixed tithes, and to all beneficial customs used in the said parish; that, for the more commodious gathering in of the tithes, there was a custom that the rector ought to have notice of the time of dressing out the tithes of coleseed, and of oats, and other corn bound; that the tithe of coleseed was the tenth bushel, the parson allowing one penny a bushel for dressing; that the tithes of oats are to be set out by *the sheaf*, or *the flock*, as the owner intended to carry the crop away; that the plaintiff was entitled to one penny for every sheep depastured in the said parish and sold before *Candlemas*; to one pig in seven, allowing one halfpenny for each pig wanting of ten; to twopence for each milch cow; and to one penny for each heifer.

The defendant *Fountain* admits his right to notice, and says, that the tithe of coleseed is by the tenth bushel.

The defendant *Fountain* admitted that it was usual to give notice of the time of dressing the coleseed, but said that whether it is so of right he knew not, nor whether the tithes of corn were to be set out otherwise than by the sheaf, or whether the tenth bushel of seed ready drest was to be paid as tithe, or whether one penny was to be paid in lieu of the wool of each sheep. He also admitted that the other tithes were payable as stated in the bill; and averred that he had set out the tithes of coleseed, hemp, and oats in kind, and had given notice thereof to the rector; that for his cows and heifers he had offered one shilling and tenpence; that he had pigs, sheep, and six lambs on the land about a month in the year 1702, and had paid the plaintiff threepence for the tithes thereof, but had no wool, nor had he sold any sheep; that he had hens and a cock, for which he was ready to pay; and had no other titheable matters. By his second answer, he said that he believed the usage of the said parish was, to give notice when the tithes of coleseed and other tithes were to be set out, and before the same were dressed or removed, and which he said that he had done in this case. He also said, that the tenth bushel was due for coleseed, allowing one penny for the dressing, and that he had fairly set out his tithe of coleseed after it was dressed, and left it on the land where it was dressed, and given the plaintiff notice; that he had forty coombs and two bushels of coleseed, worth ten shillings a coomb; and thirty acres of oats, worth twenty shillings an acre, and no more, the tithes of both which he had set out before he removed the nine parts; and that the tithe oats were set out in sheafs fit for carriage; and he said that his hemp was worth two shillings, and that he was always ready to pay his dues, and then offered them, excepting those which had been set out in kind.

The defendant *Lepia* said that he knew of no custom of paying one penny for each sheep sold before *Candlemas* in the said parish; that in the said years he had occupied several parcels of ground, of which he had mowed seventy-two acres, worth five shillings an acre, being coarse, and had depastured on the rest several sheep, but that, they being low and wet grounds, he had fed them most of the years on other lands out of the said parish; that he did not clip any in that parish in 1702, nor had he any wool, or sold any sheep there; that he had lambs, each lamb worth one shilling, and the tithe one penny each; that he had also kept cows, which had three calves, each calf worth two shillings, and two foals, worth two shillings, and that he had paid the tithe oats in kind; that he had no dwelling or habitation in the parish in either of the said years, and therefore was not chargeable with *Easter* offerings; that the custom of the parish was, time out of mind, to pay at *Easter* yearly twopence an acre for mown ground, one penny each foal, one penny an acre for fed ground, in full for tithe herbage, hay, and foals, which custom had been established by a decree of this court (a), and therefore he insisted that he ought not to pay tithe in kind for hay, grass, or foals, but the said *modus*; that he was always ready to pay the full tithe of calves and lambs, which he had tendered. By his further answer, he admitted that he had occupied in the said parish about one hundred acres of pasture; and as occasion required had removed fifty or sixty sheep to *Thorney*, which he had repeated several times a year, and never clipped any in the said parish, the tithe wool thereof was worth four shillings; and he said, that if tithe wool were paid in kind for sheep in the said parish, the tithe *pro rata* would amount to six tudd, each tudd worth sixteen shillings and fourpence; that the lamb tithe was one penny each; that a cow's milk was worth two shillings a-year, but that he had milked none; he admitted twopence a cow to be the ancient tithe for each cow; he said that he had reared seven calves, and before process issued in this cause had tendered three pounds ten shillings for tithe calves and lambs in the said years, and also the said *modus*, and that he was ready to pay the same.

PERN
against
FOUNTAIN.
The defendant
Lepia says he is
an cut-dweller,
and claims the
benefit of cer-
tain *modus*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on pursuant to an order of the twenty-first of *February* 1706, by which the matters were referred to *S. Dodd* and *H. Sawyer*; but they having made no award therein, it now, upon hearing of counsel on both sides, and on reading the depositions of divers witnesses taken in the said cause, and the said former decree the twenty-ninth of *April* 1695, *Swain against Pern* for settling the manner of tithing in *Leverington* aforesaid, appeared that the defendant *Fountain* had not duly and fairly set out the tithes in the said years.

The depositions,
and the former
decree read.

(a) See *Swain v. Pern*, Easter Term, 7. Will 3. ante, page 341.

**PENN
against
FOUNTAIN.**

Decreed that the
plaintiff is enti-
tled to notice ;

THE COURT declared, that he ought to have set out his said tithes in the same manner as he ordered and carried away the rest of his corn and coleseed ; and that the said *Fountain's* corn, being placed in shocks, the tithe thereof ought to have been set out by the shock, and not by the sheaf, and that the plaintiff ought to have had notice of the time of setting out the same, and all other his tithes.

and that *Lepla*
is not entitled to
the benefit of
the *modus*.

And it appearing further that the defendant *Lepla* was not entitled to the benefit of any of the customs or *moduses* for tithing in the said parish of *Leverington*, he being no inhabitant in the said parish, and that therefore he ought to have set out his tithes in kind, and the said defendant admitting that there was due to the plaintiff from him for the tithes in question the sum of fifteen pounds nineteen shillings, and the defendant *Fountain* admitting that there was due from him to the plaintiff for the tithes in question five pounds, four shillings, and tenpence, and the costs in this cause being settled at sixty-seven pounds, fourteen shillings, and sixpence,

IT IS ORDERED BY THE COURT, with the consent of the said parties, that they do forthwith pay to the plaintiff the aforesaid sums of fifteen pounds, nine shillings, and five pounds, four shillings, and tenpence, for their tithes, and sixty-seven pounds, fourteen shillings, and sixpence, for his costs.

EDW. WARD.
THO. BURY.
RO. PRICE.
J. SMITH.

**HILARY TERM
6 Q ANNE.**

SHALLER against PENNYFATHER.

Middlesex, 21st February 1707.

The lands called
Theobald's Park,
in the parish of
Enfield, in the
county of *Mid-*
dlesex, are not
tithe free.

THE plaintiff, as lessee, by virtue of a lease from the master, fellows, and scholars of *Trinity College, Cambridge*, of the impropriate rectory or parsonage of *Enfield*, in the county of *Middlesex*, claimed the tithes of the said parish in kind.

The defendants said, that their lands lie in *Theobald's Park*, and were part of the inheritance of THE CROWN OF ENGLAND, and were granted by CHARLES THE SECOND to *George*, late *Duke of Albermarle*, and that afterwards WILLIAM THE THIRD granted the same to the *Earl of Portland*; that before the said land was inclosed into the said park, the same was part of *Enfield Chace*, and that the crown and its lessees and tenants always enjoyed the same without payment of tithes to the lessees or owners of the said rectory ; that they had never heard that any person ever had paid any tithes for any thing arising on the said lands, or that any tithes are due to the plaintiff for the same ;

same; that HENRY THE EIGHTH, being seised both of the said rectory and the lands in question, granted the rectory to *Trinity College, Cambridge*, and that it ought to be presumed, that when he granted the same to the college, he either reserved the tithes of the lands in the defendant's possession, and all the lands in *Enfield Chace*, or else reserved them to the crown, discharged from tithes; that *King Henry the Eighth's* successors had granted the lands in the defendant's possession to several persons, tithe free, and that all who have held the same, since the grant of the said rectory, have enjoyed the same tithe free; and that it appeared, not only in several grants from the crown, but also in several ancient surveys and evidences, that the said lands and other lands in *Theobald's Park* are mentioned to be tithe free; that the lands were granted by *William the Third* to the *Earl of Portland*; that they are his tenants; and that no tithes having been ever paid, they hoped they should not now be compelled to pay tithes for the same.

SHALLER
against
PENNYFA-
THEB.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon reading the depositions, and a grant of the rectory and tithes of *Enfield*, dated the twenty-fourth of *December*, in the thirty-eighth year of *Henry the Eighth*, made by him to *Trinity College, Cambridge*, and a lease by the said college of the said rectory, and tithes in question, to the plaintiff, and the enrollment of a deed, dated the twenty-second of *March*, in the twenty-ninth year of *Henry the Eighth*, being a surrender to the crown by *J. M. Suffragan*, bishop of *Colchester*, and commendator of the abbey of *Walden*, and of the convent thereof, and of their corporation, and of the church and rectory of *Enfield*, and also a grant made to *Lord Audley*, in the thirteenth year of *Henry the Eighth*, and a surrender and grant from the said *Lord Audley* to the said *King Henry the Eighth*, made in the thirty-fourth year of his reign, and a survey of *Theobald's Park* in 1649, and a copy of a grant from *Charles the Second* of *Theobald's Park* to the *Duke and Duchess of Albermarle*, and another grant, made by *William and Mary* to the *Lord Portland* of *Theobald's Park*, and on full debate of the matter,

THE COURT declared, that the lands in the defendant's occupation, lying in *Theobald's Park*, within the parish of *Enfield*, were not discharged from, but ought to pay tithes.

PEIRCE against RUSSELL and Others; *et è Contra*.

Gloucestershire, 21st February 1707.

HILARY TERM
6. Q. ANNE.

THE plaintiff, as rector of the parish of *Littleton upon Severn*, in the county of *Gloucester*, claimed all the tithes of corn, grain, hay, cheese, wool, and lamb, and all other titheable things arising in the said parish and in the titheable places thereof.

The demesne
lands in the ma-
nor of *Littleton*,
in *Gloucestershire*,
are tithe free.

The

PRICE
against
RUSSELL
AND OTHERS;
et c. Contra.

The defendants denied that they ought to set out their tithes, in kind, or to make the plaintiff any satisfaction for the same; for that the lands held by them were heretofore parcel of the dissolved abbey or monastery of *Malmesbury*, in the county of *Wilts*, and were part of the *demesne lands* of the said abbey or monastery; that the abbots of the said monastery and their predecessors had, time out of mind, held the said lands clearly discharged of all manner of tithes; and that the same lands, being part or parcel of the manor of *Littleton*, came to *Henry the Eighth*, upon the dissolution of the said abbey, being one of the greater abbeys, by 31. *Hen. 8. c. 13.* and were afterwards granted by the said king, by letters patent dated the twenty-ninth of *October*, in the thirty-third year of his reign, to *Sir Richard Long, Knight*, and his heirs, under whom the defendants, by several mesne conveyances, claim (a).

An issue was directed to try, “Whether the lands in the possession of *Russel and Stephens*, lying in the parish of *Littleton upon Severn*, in the county of *Gloucester*, were parcel of the possessions of the late dissolved abbey or monastery of *Malmesbury*, and as such discharged of the payment of tithes in kind, or not?” on the trial of which, the jury brought in their verdict for the defendants; and the bill was accordingly dismissed.

(a) The bill also claimed tithes from *J. Hoptown*, the lord of the manor, who stated, by his answer, that he was seised of the *demesne lands*, for which there had always been yearly paid to the plaintiff *Price* and his predecessors, at *Michaelmas*, three bushels of wheat, six bushels of oats, and four groats in money,

by way of composition, and in lieu of all manner of tithes in kind arising out of and for the capital messuage farm and *demesne lands* of *Littleton*; and on reading the grant from *Henry the Eighth* to *Sir Richard Long*, the bill, as to the defendant *Hoptown*, was dismissed with costs.

EASTER TERM,
7. Q. ANNE.

BOWLES against LORD ARUNDEL.

Wiltshire, 26th April 1708.

The rector of *Donhead St. Andrew*, in the county of *Wilts*, is entitled to modules of 3l. 8s. a year, and to the running of a horse, from the third of *May* to the twentieth of *September*, in *Pond Close*, in lieu of the tithes of *Red Deer Park* and *Fallow Deer Park*.

THE plaintiff, as rector, claimed tithes of lands in the parish of *Donhead Saint Andrew*, in the county of *Wilts*, for four years past.

The defendant said, that he had, for five years past, been seised of *Wardour Castle*, and of the gardens and orchards thereto belonging, and of two several parks or inclosures, called *Red Deer Park* and *Fallow Deer Park*, belonging to the said castle; in which parks are included the said gardens and orchards, and several coppices or wood grounds, and meadow grounds, called *Wild Buck Park*; that so much of the said parks as contain three hundred and forty acres is within the parish of *Donhead Saint Andrew*; but he is entitled to the tithes of *Little Coppice* in kind.

Andrew

Andrew, and the residue in other parishes ; that he is also seised of a coppice, called *Little Coppice*, which is no part of the said parks, but within the parish ; that as to so much of the castle and premises as are within the said rectory or parish, viz. three hundred and forty acres, there is, and time out of mind hath been, a certain *modus* of three pounds, eight shillings a-year, and a horse lease, or the running of a horse, from the third of *May* to the twentieth of *September* yearly, in a piece of land called *the Pond Close* (part of *Red Deer Park*), due to the said rector, and which had been constantly received and accepted by him in lieu and full satisfaction of all tithes arising upon the premises (except *Little Coppice*), which lie within the said parish or the rectory, and titheable places thereof.

BOWLES
against
LORD
ARUNDEL.

The following issues were directed to be tried ; the plaintiff in equity to be plaintiff at law.

FIRST, Whether the sum of three pounds, eight shillings, and a horse lease, or the running of a horse, from the third of *May* to the twentieth of *September* yearly, in a certain piece or parcel of land and ground, called *the Pond Close*, part of *Red Deer Park*, in the parish of *Donhead Saint Andrew*, be a *modus*, time out of mind, payable for all manner of tithes arising upon that part of the said *Red Deer Park* and *Fallow Deer Park*, which lies within the said parish, or not ?

SECONDLY, Whether *Little Coppice* be part of *Red Deer Park*, or not ?

The jury found the *modus* as set forth by the defendant ; and also that *Little Coppice* was no part of *Red Deer Park*.

THE COURT ordered, that the defendant do pay to the plaintiff seventeen pounds, twelve shillings, in his answer tendered, in full for the arrear of the said *modus* of three pounds, eight shillings *per annum*, and in full satisfaction of the said horse lease so due, being after the rate of twenty shillings *per annum* for the horse lease for the said four years in the answer mentioned ; and that the said *modus* of three pounds, eight shillings *per annum*, and a horse lease, or running of a horse as aforesaid, be hereby decreed and established accordingly ; and that the plaintiff do pay to the defendant his costs at law and in equity, to be taxed by the deputy remembrancer of this court.

RINGSTEAD

TRIN. TERM,
7 Q. ANNE.

RINGSTEAD *against* YOUNG and Others.

Norfolk, 2d July 1708.

Tithes in kind shall be paid for turnips, when pulled up and sold, or given to profitable or other cattle, or otherways used.

THE plaintiff, as vicar of *Fouldon*, and also as farmer of the rectory of *Fouldon*, in the county of *York*, claimed the tithes of turnips.

The defendants admitted, that they pulled or dug up the turnips, but denied that they fatted any cattle therewith; but said that they fed the same with cows belonging to the dairy, and young stock.

And on debate, whether tithes are due for turnips pulled and digged up, and severed from the ground, though fed by profitable cattle, it was ordered by the Court, that the cause should stand over for the opinion of the court, and in the mean time to be attended with precedents: and upon view of several precedents in this court, and on mature consideration of the matter,

THE COURT declared, that for turnips when drawn or dug up and severed from the ground, either sold or fed by profitable or other cattle, or otherwise spent or used, tithes in kind are due.

It is therefore ordered and decreed this day by the Court, that the several defendants shall account with the plaintiff for the tithes of their turnips drawn or dug up, and severed from the ground, and fed within the parish in the years mentioned in the bill.

TRIN. TERM,
7. Q. ANNE.

HALL *against* FILTZ.

Middlesex, 1st July 1708.

The vicar of *Ealing*, in *Middlesex*, claims tithes of cows, calves, pease, beans, and turnips; and a mortuary for every person who dies possessed of personal property.

The defendants say, they fed sheep with the turnips;

sold their sheep before shearing time;

THE plaintiff, as vicar of the vicarage of *Ealing*, otherwise *Zealing*, in the county of *Middlesex*, claimed all manner of small tithes whatsoever yearly arising, &c. therein, and in the titheable places thereof (except of the rector's glebe land there), and also, by the custom of the said parish, a mortuary for every person dying possessed of moveable goods within the said parish.

The defendants admitted, that they severally occupied farms within the parish, and set forth the quantities and values of their tithes, and offered payment to the plaintiff for their tithes of lamb, wool, fruit, and garden stuff; and as for turnips they said, that they only fed their sheep therewith, and thereby improved their lands for the bettering their next succeeding year's crop of corn to be sown, and did not make any other advantage thereof, nor did they sell any of their turnips, or pull any, except a few for the use of their family; that they did sell and dispose of their flocks of sheep at such time as the best advantage and opportunity

nity offered, which generally happened before *Easter*, long before shearing time. They admitted that they had several crops of peas and beans, which they said they had gathered green from the stalks; and that the impropiator of the parsonage hath all along, from time to time, claimed the tithe, thereof, and that they had paid the same to him. They insisted, that neither the plaintiff nor his predecessors ever had tithes of pease or beans, but that the impropiator always took the same, or some composition in lieu thereof; and also, that there is a *modus* or customary payment, used time immemorial in the said parish, that the parishioners and farmers of the said parish ought to pay only yearly for the tithe of every milch cow, and the calf she might yearly bring forth, fourpence, in lieu of the tithe for such calf, and for the milk and herbage of the said cow, and twopence every year in lieu of tithe for every dry cow which should not bring a calf; and denied any custom in the said parish for the payment of any *mortuary*.

HALL
against
FILTZ.

and gathered their peas and beans green from the stalks;

and that the tithes of pease, and beans belong to the impropiator;

and state a *modus* of 4d. a-year for every milch, and 2d. a year for every dry cow.

The defendant *Filtz* confessed, that he had not set forth his tithes, having paid the former vicar five pounds *per annum* in lieu of all small and privy tithes; and that the plaintiff had several times accepted thereof, although he now refuses the same; and he insisted that, by the custom of the said parish, when any of the farmers and occupiers of lands therein have any one year paid tithes, or compounded with the impropiator or farmer for the tithes of any part of the lands within the parish, which they may plough, sow, and have a crop upon in one year, and do afterwards sow turnips thereon for a second crop, in order for the bettering and meliorating of the next succeeding year's crop upon the said ground, then such turnips are not titheable, nor ought any tithes to be paid for the same, nor had any tithes in such case ever been demanded or paid for such turnips within the said parish.

The defendant *Filtz* says, he paid 5l. a-year in lieu of tithes; and insists, that a second crop after turnips is tithe free.

The plaintiff replied; and said, as to the tithes of pease and beans growing in the common fields, pulled and gathered green from the stem, in and by the bill demanded, that he did not intend to proceed any further for the same, but thereby discharged the defendants from examining any witnesses thereto.

The plaintiff relinquishes his claim, as to pease and beans.

As to all other the matters in the bill the plaintiff replied generally; and the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause,

IT IS ORDERED BY THE COURT, that the defendants do severally account with the plaintiff for the tithes of the several titheable matters and things by the bill demanded (except pease and beans as aforesaid), but that the defendants are not to be accountable for any mortuaries; and it is referred to the deputy remembrancer to take and report the said account.

The defendants ordered to account for all tithes, except of pease and beans.

And

HALL
against
FILTZ.

An issue directed
to try the *modus*.

A verdict found,
in favour of the
modus, of 4d. for
every milch
cow.

Confirmed on a
new trial.

And as to the *modus* of fourpence for every milch cow, and the calf she may yearly bring forth, in lieu of tithe for such calf, and for the milk and herbage of such cow ; and twopence every year, in lieu of tithe for every dry cow which did not bring forth a calf, by the said defendant's answer insisted on, it is hereby referred to a trial at law ; the plaintiff in equity to be plaintiff at law ; and the cause to be tried before the Lord Chief Baron.

A trial upon the said issues was accordingly had ; upon which trial the jury found the issue of fourpence in lieu of the tithe for every milch cow and calf she might yearly bring forth in favour of the defendants, and the other issue of twopence, in favour of the plaintiff. But a new trial was directed to be had before the Lord Chief Baron upon that issue only, as to the fourpence in lieu of the tithe for every milch cow, and the calf she might yearly bring forth, in lieu of tithe for such calf, and for the milk and herbage of such cow. Upon which trial the jury found the said issue for the defendants.

In pursuance to the order made the first of *July* 1708, the deputy remembrancer made his report, dated the sixteenth of *June* last ; and upon reading the said decree and report, and the exceptions put in thereto ; and on hearing counsel on both sides ;

Report of tithes
due.

IT IS ORDERED BY THE COURT, that the exception filed by the defendant *Filtz*, touching the tithes of thirty-five lambs, at eight shillings a lamb, which he insisted, by the said exception, ought only to be six shillings a-piece, be over-ruled ; and the exception touching three shillings and eightpence for the agistment tithe of thirty-four ewes and forty ewes be allowed ; and that the defendant *Davenport's* exception, touching one shilling and sixpence halfpenny for the agistment tithe of thirty sheep be allowed ; and that his exception touching the tithe of twenty lambs, at eleven shillings and sixpence each lamb, which the said defendant, by his exception, insisted to be only worth six shillings a-piece, be allowed at eight shillings a-piece ; and that the defendant *Weatherley's* exception, touching five shillings for the agistment tithe of one hundred and three weather sheep be allowed.

And it is hereby referred to the deputy remembrancer to compute accordingly, and make his further report herein : and it is further ordered by the Court, upon reading the said report, and the defendant *Winchester's* answer, that the said report, as to him, shall be, and is hereby confirmed ; and that he do forthwith satisfy and pay to the plaintiff two pounds, nine shillings, and three farthings, reported due for his tithes. The costs to be reserved till further report come in.

In pursuance of the said order, the deputy remembrancer made his report, dated the first of *February* instant, and no exceptions were taken to it ; and upon reading the said orders and reports, and on long debate of the matter,

HALL
against
FILTZ.

IT IS FINALLY ORDERED, that the said report be confirmed with costs for the plaintiff, but that costs for the last trial are to be allowed to the said defendants ; and the said defendants are forthwith to pay to the said plaintiff the several sums reported due for their said tithes.

EDW. WARD.
THO. BURY.
RO. PRICE.
S. LOVELL.

DYKES *against* THOMPSON and Others ; *et è Contra*.

EASTER TERM
8. Q. ANNE.

Cumberland, 12th May 1709.

THE bill stated, that the plaintiff was seised in fee of the manor or lordship of *Wartbole*, in the county of *Cumberland*, and of the *demesne lands* in the parish of *Plumbland* ; that he and his ancestors had, time out of mind, paid to the rector of *Plumbland* six pounds yearly, on the second of *February*, in lieu of all manner of tithes arising within the manor and demesne lands, and therefore received the tenth part of all corn, grain, hay, wool, lamb, and other titheable things there, from all the tenants of the customary tenements therein ; but that the defendants, combining together, had refused to pay him the same.

The lord of the manor of *Wartbole*, in the county of *Cumberland*, is entitled, on paying the rector of *Plumbland* 6l. a year, to all tithes of the said manor and the demesne lands thereof.

An issue was directed to try the *modus*, and a verdict was found for the plaintiff. But the Court ordered, that upon the said defendants paying to the plaintiff such costs as shall be taxed by the deputy remembrancer for the last trial, a new trial shall be had upon the said issue by a special jury. In pursuance of which order the costs were taxed at sixty pounds, and paid.

And thereupon a new trial was had ; and upon the trial thereof, the jury gave their verdict again for the plaintiff.

IT IS ORDERED AND DECREED BY THE COURT, that the plaintiff, as lord and owner of the said manor or reputed manor of *Wartbole*, and of the said *demesne lands* thereunto belonging, and his heirs, paying the prescription rent of six pounds yearly to the rector of *Plumbland*, as formerly has been done and accustomed, is, in respect thereof, entitled to have, take, and receive all the tithes of the titheable matters and things yearly arising within the said manor and demesne lands to his own use ; and the said usage is hereby, and by the power and authority of this court, established, ratified, and confirmed for ever ; and

DYKES
against
THOMPSON
AND OTHERS;
et c. Contra.

that, in respect thereof, the said plaintiff *Dykes*, and all persons claiming under him, lords of the said manor, or reputed manor, of *Warthole*. and the demesne lands thereof, for the time being, is and are entitled to, and shall for ever hereafter have, take, and receive, to his and their proper use and uses, all the tithes arising within the said manor, or reputed manor of *Warthole*, and the demesne lands thereof, according to the said several verdicts had.

The plaintiffs and defendants having computed and agreed upon the value of the tithes due to the plaintiff to the time of exhibiting the bill at fifteen shillings,

IT IS FURTHER ORDERED BY THE COURT, that the defendants shall forthwith pay to the plaintiff the said sum of fifteen shillings, so agreed to be due from them, with his costs to be taxed by the deputy remembrancer.

TRIN. TERM,
3. Q. ANNE.

SMITH against JOHNSON.
Durham, 14th July 1709.

The rector of *Bishop Wearmouth* claims tithes both great and small.

The defendant insists on a *modus* of 6d. a-year in lieu of the tithe of all feathered fowl,

and an exemption from the tithe of hay on all lands in *East Burden*;

and a *modus* of 5s. a-year in lieu of tithe hay and all small tithes for *Bainbridge Holme*;

THE plaintiff, as rector of *Bishop Wearmouth*, in the county of *Durham*, claims all tithes, both great and small, arising within the said parish, and the titheable places thereof.

The defendant *Johnson* said, that he kept one brood goose, and no more, which had young ones, and insisted on a *modus* of sixpence, payable at *Easter* yearly, in full of the tithes of all feathered fowl kept about the messuage in *Wearmouth* wherein he lives.

The defendants *Huntley, Wilkinson, Robinson, and Ayre*, insisted, that they are exempt from payment of all hay tithe upon the several farms and lands in *East Burden*, otherwise *Town Burden*, as being tenants, by leases for lives, from the *Bishop of Durham*, who is seised of all the messuages, lands, and tenements in the said town aforesaid in fee, in right of his bishopric, and who, and his predecessors, have, time out of mind, for himself and themselves, his and their tenants and farmers of all the said premises, held and enjoyed the same, discharged of all hay tithes.

The defendants *Pearce* and *Watson* insisted on a *modus* of five shillings payable on *Good Friday*, and two faggots, in discharge of all hay tithes upon all or any part of the lands, called *Bainbridge Holme*, and for all small tithes, except *Easter* reckonings or offerings.

All the defendants denied that they bought, bred, or depastured, any barren or unprofitable cattle not used to the pail or plough, or any cattle whatsoever, other than such as in their answers is mentioned, within the said parish, since the plaintiff was rector thereof, and hoped they should not be compelled to pay tithes for

for the same; for that the said parish is parcel of the hundred or ward of *Easington*, in the said county of *Durham*; and that, by ancient custom within the said hundred, the owners, tenants, and farmers, of any lands and tenements within the said hundred have been, and ought to be discharged from the payment of tithes for all barren and unprofitable cattle bred, fed, or depastured, or for or in respect of the agistment or depasturing thereof, or of any other cattle in or upon the said lands or ground, or any part thereof; and that accordingly no tithes have at any time been paid for any such barren cattle, or the agistment or depasturing the same, or any other cattle, within the said hundred; for that the rector of the said church has enjoyed glebe lands and other tithes and profits yielding a competent reasonable maintenance and subsistence for him and them, without the tithes for barren and unprofitable cattle, or agisting or depasturing the same, or any other cattle, amounting to three hundred pounds *per annum*, and now to four hundred pounds; and they insisted that they were exempt from the payment of the said tithes.

SMITH
against
JOHNSON.

and also an exemption from all agistment tithes of lands lying in the hundred of *Easington*.

The defendant *Cragg* confessed, that he farmed a *wind corn mill*; but said, that no tithe is due for the same, as it stood within part of *Easington Ward*, and so, by custom, was freed from the payment of tithes.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the depositions as to the prescription of fixpence *per annum* in lieu of the tithes of all feathered fowl, insisted on by the defendant *Johnson* in his answer, the same not being proved or made out, this court doth overrule the same; but as the plaintiff demands tithes for geese only, and for no other feathered fowl, it is ordered, that *Johnson* do account with the plaintiff for the tithe of geese only; and that the other defendants be dismissed out of this court, as to the account demanded against them touching the tithe geese, and all other fowl, as it appears that they have paid the plaintiff for the same.

The *modus* as to feathered fowl not being proved, the tithes of geese decreed.

And as to the custom whereby the several defendants claim to be exempt from all tithes for barren and unprofitable cattle, and for the agistment and depasturing thereof, or of any other cattle, and from all grazing and agistment tithes, THE COURT declared, that the said custom, if any such there be, is void in law, and therefore overruled the same. But as it appeared, that only the defendants *R. Hodgson*, *J. Shepherdson*, *W. Atkinson*, and *A. Hodgson*, had any such barren and unprofitable cattle agisted or depastured within the time mentioned in the bill, it is ordered, that they only do account for the same; and that all the other defendants shall be and are hereby dismissed from the said bill, as to the accounts demanded of them touching the said tithe.

The pretended exemption from agistment tithes in *Easington* declared to be void.

L 1 2

And

SMITH

against

JOHNSON.

Tithes decreed
for sheep bought
after shearing
time, and sold or
killed unshorn.

Issues directed
as to the *modus*
of 5s. a-year for
Bainbridge
Holme, and the
exemption from
tithe hay in *East*
Burden.

And as to the tithes demanded for sheep bought in after shearing, and wintered and sold, or killed unshorn, it is ordered, that the defendants *Shepherdson, Hodgson, Atkinson, Hodgson, Thompson, and Reed*, do account for the tithes of such sheep; and that the defendants *Reed and Thompson* shall be dismissed as to all other matters in the said bill contained.

And as to the *modus* insisted on by *Peareth and Watson*, touching the farm called *Bainbridge Holme*; and the exemption insisted on by *Huntley, Wilkinson, Robinson, and Ayre*, touching the township of *Town Burden*, otherwise *East Burden*, for the non-payment of tithe hay, as being the *Bishop of Durham's* tenants; a trial at law is directed upon these two issues; the plaintiff in equity to be plaintiff at law, and to be tried by a special jury.

FIRST, "Whether the *Bishop of Durham*, and his predecessors
" bishops of *Durham*, have, time out of mind, for himself and
" themselves, his and their tenants and farmers of all and every
" the messuages, lands, and grounds, within the said township of
" *Town Burden*, otherwise *East Burden*, and of every part thereof,
" held and enjoyed the same discharged, acquitted, and privi-
" leged of and from the payment of all tithes of or for hay
" growing or renewing in and upon the said premises, and every
" part and parcel thereof?"

SECONDLY, "Whether a *modus* of five shillings, payable on
" *Good Friday* yearly, and two faggots, be and has been, time
" out of mind, due and payable to the rector of the rectory of
" *Bishop Wearmouth* for the time being, for and in lieu and full
" discharge of the tithes of hay growing and renewing upon the
" tenement or farm, called *Bainbridge Holme*, and every part and
" parcel thereof, and for and in lieu and full discharge of the
" tithes of calves, wool, lambs, geese, pigs, and all other small
" tithes whatsoever (except *Easter* reckonings or offerings),
" yearly, from time to time, renewing, happening, or arising
" upon the said tenement or farm, called *Bainbridge Holme*, and
" every part and parcel thereof."

Verdicts on
both points in
favour of the
defendants.

Verdicts on both issues were found for the defendants; but a new trial was ordered, the plaintiff first paying the defendant's their costs taxed on the trial of the said issues, and on the second trials verdicts were again found on both issues for the defendants.

The bill, as to
the tithe of hay
on *Bainbridge*
Holme and *East*
Burden, dismiss-
ed.

THE COURT thereupon ordered, that the defendants *Peareth, &c.* be dismissed, with very moderate costs, to be taxed in this court and at law; and that the deputy do, out of such costs, deduct the several *moduses* payable by the defendants for the time in the bill mentioned, or the values thereof.

CRISPE *against* MICKLEBURGH.Norfolk, 21st July 1709.TRIN. TERM,
8. Q. ANNE.

THE bill stated, that for twenty years last past the plaintiff had been rector of *Ellingham*, in the county of *Norfolk*, and, as such, was entitled to all tithes, duties, and profits whatsoever, belonging to the said rectory, and the titheable places thereof; that the defendant, for eight years past, had been tenant and occupier of several acres of mowing ground in the parishes of *Kirby Cane* and *Stockton*, and five acres in *Ellingham*, for which he ought to have paid tithes in kind, or a *modus* of twopence an acre yearly in lieu thereof; that there is in the said parish a large, open, uninclosed common, of about three hundred acres, called *Mickle Fen Pasture*, or feeding ground, lying between and extending itself into the several parishes of *Kirby Cane*, *Stockton*, *Gilston*, *Ellingham*, and other towns in the said county, in which the defendant, for the said time, had put yearly to depasture heifers, colts, and horses, with other cattle, for which tithe herbage was due to the plaintiff, yearly worth thirty shillings, or more, but that the defendant had refused to pay the said tithe herbage due to him. The bill therefore prayed a discovery of the *modus* for the said mowing ground, and what quantities of hay he had made thereon; and also a discovery of his other tithes, and a satisfaction for the same.

The rector of *Ellingham*, in *Norfolk*, claims a *modus* of 2d. an acre for meadow ground, and tithes for the agistment of cattle on that part of *Mickle Fen* which lies in *Ellingham*.

S. C. 1. Bro.
P. C. 278.
S. C. Rayn.
115. 1011.
S. C. 2. Eq. Abr.
732.
S. C. 9. Viner,
43.
See another
cause, Trin.
2. Geo. 1.

The defendant appeared, and put in his answer, and thereby insisted on a *modus* of twopence an acre for the meadow ground; but as to the tithes of the feed of his cattle on the said common, called *Mickle Fen*, he stated, that the inhabitants of the respective parishes adjoining to the common had, time out of mind, paid tithes for the cattle fed thereon to the incumbent of the parish where the owner of such cattle lived, and where, in the winter season, they were kept; that he had paid tithe for his cattle fed on the said common to the incumbent of *Kirby Cane*, in which parish he lived, and to the rector of *Stockton*, where his other farm lay; and that he had two parcels of *Dole Land* in *Gilston Common*, where he had a right to feed cattle and cut alders, but could not come at those lands without driving over that part of the common, called *Mickle Fen*, which lay in the parish of *Ellingham*.

The defendant admits the *modus* for the meadow ground; but says, that he lives in *Kirby Cane*, adjoining to *Mickle Fen*; and that he had paid the agistment tithe to the rector thereof.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading several of the proofs taken in the cause,

IT IS ORDERED BY THE COURT, that the defendant do account for the tithes of the cattle depastured on that part of *Mickle Fen* which is in *Ellingham*, and also for twopence an acre for the meadow land in that parish.

The Court decrees the agistment to be paid to the rector of *Ellingham*.

CRISPE

against

MICKLE-

BURGH.

But, on appeal, the decree is reversed, for that the custom to pay such tithes where the farmer lives, is good.

The defendant *Micklebury* appealed from this decree to the house of lords, insisting, that no tithes had ever been paid, or were due to the rector of *Ellingham*, for his cattle fed on *Mickle Fen*, and admitting the *modus* of twopence an acre for the meadow lands ; and, after argument, it was resolved, that the decree of the court of exchequer should be reversed, because the custom that every farmer should pay tithes to the rector where he lived, was good ; and that the plaintiff's bill in that court be dismissed, without prejudice as to his right to the *modus* of twopence an acre for the five acres of land in *Ellingham*.

TRIN. TERM,
3. Q. ANNE.

WRIGHT against ELDERTON.

Middlesex, 23d July 1709.

The vicar of *Stepney*, in *Middlesex*, is entitled to 3s. 6d. a-year, in lieu of the tithes of garden herbs and fruits; to 3d. a-year from every person above the age of sixteen, in lieu of *Easter* offerings; to 6d. a year for every cow, though milked out of the parish; to 2od. a year for every sow with pig; and to tithes in kind for the first crop of turnips not fed; but not to the tithe of turnips sown, as a second crop, on the same ground from which corn has been reaped and tithed.

S. C. Bunb. 19.

S.C. Rayn. 119.

THE bill stated, that the plaintiff had been, for twenty years, lawful vicar of *Stepney*, in the county of *Middlesex*, and intitled to the tithes and profits of the said vicarage ; that the plaintiff's predecessors, by ancient custom, constantly did, and the plaintiff ought now to receive threepence, at *Easter*, for every person above sixteen years of age within the said parish, to be paid by the master of the family where such persons shall dwell ; and the tithes of all herbs, fruits, roots, milk, and pigs ; that the defendant had been a housekeeper in the parish for eight years past, and had, during that period, seven persons in his family above the age of sixteen ; that he had occupied, during the said time, two gardens and one orchard, which produced roots, fruit, and herbs ; that he had also sixteen acres of turnips, part of which he had pulled up and sold, and with the other part had fed his cattle ; that he had also kept divers milch cows and pigs ; the tithes whereof amounted to fifty-eight pounds, ten shillings, and sixpence.

The defendant contended, that the threepence for every person in the said parish, as in the bill is mentioned, was not of right due ; that a *modus* of four shillings an acre for each garden was due, in lieu of the tithes of garden herbs and fruits ; and sixpence for each cow, in lieu of milk ; and that he never knew any tithes paid for pigs ; that the tithe of turnips was due when sown as a first crop, and no other tithes paid for the same ground that year ; but that when corn had been sown in any year in the said parish, and tithes paid for the same after the rate of four or five shillings an acre, according to the grain sown, and the same land was afterwards, in the same year, made to produce a crop of turnips, no tithes were payable for the same, nor had any been before demanded ; it being very unreasonable that tithes should be paid twice for the ground. He admitted that he had lived eight years in the parish, and had seven persons in his family above sixteen years of age ; but insisted, that the plaintiff was not entitled to threepence for each of them. He said, that he had paid the plaintiff the rates he demanded for his tithes

(a) See other causes, Trinity Term, 13. Geo. 2. and Mich. Term, 32. Geo. 2.

in

in the year 1702, for which he had a receipt; and insisted on the same in bar of the plaintiff's demands to that time. He set forth the number of cows which he had kept at *Mile End*, in the said parish, in the year 1703; and alledged, that he had offered, and was still ready to pay the usual *modus* for the same; but insisted, that the cows which he had kept on *Red Lion Farm* being always milked in *Whitechapel*, he ought not to pay tithes, the farm-house being in the parish of *Whitechapel*, and he having paid tithes for them to the rector of that parish. He confessed, that in the year 1703 he had sowed thirty-three acres of land with turnips, part whereof he had sold, and with the remainder he had fed his cows; but he said, that the greater part was sown that year with corn, for which he had paid tithes four or five shillings an acre; and therefore insisted, that he ought not to pay any further tithes for the same that year; and stated, that for such part as had not been so sown he had offered to pay tithes, and was still ready so to do; and he pleaded the tender of twenty pounds in satisfaction thereof.

WRIGHT
against
ELDETON.

THE COURT ordered the defendant to pay the tithes of his garden, at the rate of three shillings and sixpence a-year, that being the usual rate paid for the same; and for *Easter* offerings, at the rate of threepence yearly for each person in his family above the age of sixteen years; and for tithes of all his milch cows, as well those kept on *Red Lion Farm* as those in the parish of *Stepney*, at the rate of sixpence a cow yearly, although the same had been milked in the parish of *Whitechapel*; and also twentypence yearly for every sow that had pigs which were at any time kept in the parish of *Stepney*, although such sows pigged in the parish of *Whitechapel*, and also the tithes of turnips of the first crop not fed.

But as to the tithe of turnips sown after corn reaped, the Barons were divided in their opinions, and took time to consider further of the same; and on the eighth of *December* 1710, when the cause came on to be further heard, the question was argued by counsel a second time.

THE COURT was of opinion, that tithes are not due for turnips sown upon land as an after crop, where corn hath been the same year cut, and tithes paid for the same; and thereupon ordered that the bill, as to the tithes for such turnips, be dismissed.

WALKER against WEBB.

Hertfordshire, 10th June 1710.

TRIN. TERM,
9. Q. ANNE.

THE vicar of *Ledbury*, in the county of *Hertford*, claims the tithe of hay, and all other privy tithes arising therein.

The vicar of
Ledbury, in *Hertfordshire*, claims
tithes in kind.

L. 1 4

The

WALKER
against
WEBB.

The defendants say, that the parsonage is divided in two portions, called *Upper Hall* and *Neiber Hall*, and the portionaries entitled to the tithes of hay, corn, and fruit, in *the Forren*.

that the vicar is not endowed with the tithe of hops, hay, and fruit in the *Forren*, but is entitled to the tithe of hay and fruit in *the Burrough*;

that some of the demesne lands are tithe free;

The defendants, by their answer, said, that they knew not with what tithes the said vicarage was endowed, but that there were two halls or portionary parsonages or prebends of the said church, the one called *the Upper Hall*, and the other *the Lower Hall*; and that *J. Benson* and *J. Clarke* were presented to the said portionary parsonages, and were thereby entitled to the tithes of hay, corn, and fruit, in that part of the parish called *the Forren* or outpart of the said parish, of all titheable lands there that were not discharged of tithes, as several estates there were; but that there was a *modus decimandi*, payable, time out of mind, yearly, out of all the estates in *the Forren*, except such as were exempted from tithes, for all the tithe hay and fruit in such estates in *the Forren*; that such *modus* had been settled and established by a decree in chancery about the year 1679; that the said vicarage had been endowed, and alternately presented to, by the parsons and portionaries for the time being, and was not endowed with any tithe of hops, hay, or fruit in *the Forren*, and but with tithe hay and fruit in *the Burrough*, there being no tithe hops paid in *the Burrough*; that about thirty years ago there had been a verdict at *Hereford* assizes for *J. Skipp* and *J. Elton*, farmers of the said portionaries, against *C. Townsend*, the then vicar, for tithe hops in *the Forren* (a), that the mortuaries were payable to the said portionaries, and not to the vicar; that all or some of the demesne lands of the manor of *Ledbury*, and the

(a) On the 6th June. Trinity Term, 30. Car. 2. *Townsend*, the then vicar of *Ledbury*, filed his bill in this court against the defendant *Skipp*, the tenant for lives in being of the glebe lands and tithes within the said parish or portionary called *Overball*, whereof *Dr. Dukeston* had, for divers years, been incumbent, claiming all small tithes in the said parish or borough of *Ledbury*. The defendant denied, that the tenant or occupier of the said portionary had ever, in the memory of man, paid any kind of tithe to the vicar, or made any sort of recompence for the same, for or in respect of the said glebe lands or tenements. He also said, that he was seised of divers lands and tenements in the said parish, with the tithes thereof, formerly the demesnes of the manor of *Ledbury*, which are tithe free. He confessed, that he was seised of other lands, which ought to pay the tithe of corn, grain, hay, fruit, hemp, flax, and hops, to the incumbent, and all other titheable matters to the vicar; that the tithes of corn, grain, hay, fruit, hops, hemp, and flax, had been immemorially due and paid to the incumbents of the portionaries; and that all other tithes, together with certain proportions of wheat and

oats issuing out of the said portionaries, belonged to the vicar, save only for some buigages and farms for which no tithe had ever been paid to the vicar. The chief matter in dispute was, whether the vicar ought to have the tithe of hops throughout the parish of *Ledbury*, except the glebe of the portionaries, and the tithes of wood, herbage, and other small tithes of the demesne lands of the manor of *Ledbury*. The Court directed two issues: FIRST, "Whether or not the vicar ought to have the tithe of hops in all the parish, or in any and in what part thereof, except the borough and hospital lands;" which were not controverted.—SECONDLY, "Whether or not the vicar ought to have the tithes of wood, herbage, and other small tithes arising upon and out of the demesne lands of the manor of *Ledbury* in the possession of the defendant or his tenants." But it does not appear in the exchequer books that these issues were tried; or, whether any proceedings were afterwards had in the matter.—But see the case of *Skipp v. Voke*, Mich. Term, 21. Car. 2. ante, page 107.

manors

manors of *Upper Hall* and *Nether Hall*, and the demesne lands and glebe, and some other lands in the said manors, were exempted from the payment of all or some small tithes ; that there was a custom through the said parish to pay one penny only for every milch cow, in lieu of milk and cheese. They denied, that by immemorial custom, prescription, or otherwise, the vicar had been entitled to all, or had received any tithes of hay, hops, or fruit in *the Forren* ; but said, that there was a custom to pay certain sums of money, by the owners or occupiers of lands, to the portionaries, or their farmers, or lessees, for all tithe hay and fruit in *the Forren* ; but they knew not the particular sums, as the owners and occupiers paid different sums according to their respective estates. They admitted, that the plaintiff ought to have the tithes of calves, sheep, lambs, wool, pigs, geese, eggs, flax, hemp, and herbage, and all other small and privy tithes in *the Forren*, except from such lands as were exempted from the payment of tithes, and except tithe hops to the portionaries ; as also the *modus* for the hay and fruit ; and a *modus* of one penny a cow only yearly, payable to the vicar in lieu of tithe milk and cheese. They denied that they had refused to pay to the plaintiff the tithes, mortuaries, or oblations that were due and used to be paid to the vicar, but by their answer offered to pay him all such as he was justly entitled to, except for what they had paid him, and except for hay, fruit, hops, milk, and cheese. And they set forth what particular lands they held in the said *Burrough* ; and what lands in the said *Forren* ; and what lands in each of the said places were discharged of the payment of tithes ; as also the particulars and values which they respectively had ; and what compositions had been made ; and what money had been paid by them or their landlords for the tithes due from them respectively.

WALKER
against
WEBB.

that there is a
modus of 1d. a
milch cow ;
that the portion-
aries are entitled
to certain sums,
in lieu of the
tithe of hay and
fuel ;

that the vicar is
entitled to other
small tithes.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and on reading the defendants answer, and the proofs taken in the cause, and the defendant *Walker's* answer to the cross bill, and a decree of this court, dated the sixth of *June*, in the third year of *Charles the Second*, *Townsend*, clerk, plaintiff, and *Skipp*, defendant, and the *poslea* returned thereon, and several exhibits proved in the cause, and on long debate,

On reading the
evidence, the
bill is dismissed.

IT IS ORDERED BY THE COURT, that the said defendants shall be, and are hereby dismissed of and from the said bill, as to the tithe of hops, and also as to the rest of the matters and things in the said bill contained.

EDW. WARD.
THO. BURY.
R. PRICE.
S. LOVELL.
PRICE

MICH. TERM,
9. Q. ANNE.

PRICE *against* DOWNES.

Essex, 6th November 1710.

The rector of *Winnington*, in *Essex*, claims tithes of a farm called *Cold Harbour*, and other lands of the value of 180*l.* a year at the rate of 2*s.* 6*d.* in the

THE rector of *Winnington*, in the county of *Essex*, stated, that the defendant, in the year 1708, occupied a farm, called *the Island of Cold Harbour*, and other lands within the parish, of the yearly value of one hundred and eighty pounds; that it was customary for the occupiers of lands within the said parish to pay the sum of two shillings and sixpence in the pound for the tithes of all meadow, pasture, and feeding lands therein.

The defendant says, that part of the said farm, called *King's Land*, is tithe free, and the residue only worth 86*l.* a year; and that the rate is only 2*s.* 4*d.* in the pound.

The defendant admitted that he was occupier of the said farm, and of other lands; but said, that certain lands called *the King's Lands*, part of the said *Island of Cold Harbour*, of the yearly value of twenty pounds, were part of the dissolved priory of *Sheen*, in the county of *Surry*, which was one of the greater monasteries, and dissolved by the statute 31. *Hen. 8.* and therefore exempt from the payment of tithes; that all the titheable lands in the defendant's possession, within the said parish, were, after deducting the said exempted lands, of the yearly value of eighty-six pounds, and no more, for which there was a running composition between the plaintiff and the defendant for the payment of two shillings and fourpence halfpenny in the pound in full satisfaction for all tithes of the said lands, and which amounted to ten pounds four shillings, which the defendant tendered the payment of by his answer, and which the plaintiff had accepted out of court in a former suit brought for the tithes of 1707, the plaintiff not having given any notice to the defendant that he would take his tithes in kind.

On reading the evidence,

King's Land is declared to be tithe free,

Whereupon, and upon reading an order of this court, dated the twenty-ninth of *November 1708*, and a receipt thereon for ten pounds four shillings in full for tithes due to the plaintiff for 1707, and the grant of the said *King's Lands*, by letters patent dated the seventeenth of *December*, in the forty-fifth year of *Queen Elizabeth*, and a record of the augmentation office, the bill and answer, and the proofs taken in the cause, it appeared that the said lands called *the King's Lands* were parcel of the dissolved priory of *Sheen*, and that the same being one of the greater monasteries dissolved by 31. *Hen. 8.* was exempt from the payment of tithes, and that the composition for the titheable lands was still subsisting.

and the rate of 2*s.* 4*d.* in the pound confirmed.

THE COURT declared, that the said lands, called *the King's Lands* were exempt from the payment of all tithes; and therefore ordered, that the defendant do pay to the plaintiff ten pounds four shillings for his tithes of the eighty-six pounds *per annum* for

for the titheable lands in his possession, at the composition of two shillings and fourpence halfpenny in the pound aforesaid, out of which the said defendant is to detain five pounds for his costs of the plaintiff's controverting the tithes of the said exempted lands.

PRICE
against
DOWNES.

The plaintiff to
pay costs for
claiming tithes
of the exempted
lands.

NICHOLAS *against* ELLIOT.

HILARY TERM
9. Q. ANNE.

Surry, 1st February 1710.

THE vicar of *Shalford*, in the county of *Surry*, with the chapelry of *Bramley* thereto annexed, claimed all small tithes, and stated, that the defendant had compounded with him for small tithes to the year 1705, except for the small tithes of turnips, pease, wood, hemp, flax, and carrots; that for the year 1706 the defendant, upon a reference, paid the plaintiff for agistment tithe of turnips and other small tithes; that he had several ponds, in which he bred a great number of fish, and that he had yearly cut great quantities of coppice or underwood, without paying tithes for the same; that he the defendant, being farmer of the great tithes encroached upon the vicar's title, for that it being a constant custom in the said parish and chapelry for the vicar to have the tithes of pease and beans set, drilled, or sowed in rows or ranks in a garden-like manner, cultivated with the hoe, or weeded with the hand, for the most part having carrots sowed between them, the plaintiff's predecessors had, time out of mind, received and enjoyed the tithes of all lands within the said parish that were in that manner sowed, set, or drilled, which the defendant and his father, who farmed the great tithes before him, broke in upon, and carried away such tithes by force, because they then, about thirty years since, began to plough the ground instead of digging it, and then managed the crop after the same manner with the hoe, or weeding with the the hand, alledging that crops growing where the plough is used must be great tithes, whereas the custom of the said parish is manifestly the contrary in the tithes of hemp, flax, woad, and carrots, which are sowed after the plough; that the defendant had great quantities of pease and beans yearly set, sowed, and managed in the manner before mentioned, but that because the land was ploughed, he had refused to pay any tithes for the same; that the plaintiff hath by this means been defrauded of two thirds of tithe pease, besides the agistment of turnips (except for the year 1706), and of fish, wood, poultry, the growth of wool not shorn, and of young, barren, and unprofitable cattle fed and fatted. The bill therefore prayed, that the defendant may answer the premises, and be compelled to pay the true value in satisfaction for the tithes.

The vicar of
Shalford, in *Sur-*
ry, claims the
tithes of honey,
wax, eggs, herb-
age, beans,
pease, and fish.
S.C. Rayn. 119.
S. C. Bunb. 19.
S. C. 2. Eq.
Abr. 734.
S. C. Bro. P.
C. 31.

The

NICHOLAS
against
ELLIOT.

The defendant says, that the tithes of honey and wax are included in the orchard tithes ; that he is willing to pay 6d. a-year for tithe eggs ;

that carp bred in a pond are not titheable ;

and that his beans and pease having been planted in ranks in the fields after the plough, and not after the spade, the tithes thereof are due to the impropriator, and not to the vicar.

The defendant admitted the plaintiff to be vicar, and said, that he had compounded with him for small tithes to *Michaelmas* 1705 ; that in 1706 he paid him in full for all tithes upon a reference ; and that in the years 1707 and 1708 he took several small tithes in kind ; that his tithe of honey was always comprised in the orchard, and that he never kept an account of the tithe of eggs, but is willing to pay sixpence for the same in each year ; that in the year 1708 he planted about half an acre of beans in the field with the hand in ranks, but the same having been so planted after the plough, and not after the spade, the tithe thereof belongs to the impropriator ; that he lately sold three hundred and fifty carp for fourteen pounds, and paid no tithes for them, there being none due, as he was advised ; that he is willing to charge himself with the tithe of one hundred wethers each year, bought in about *Michaelmas*, and sold out in *January*, which were fed upon errishes and after-pasture of meadow, and upon his turnips, together with his ewes and lambs ; that he planted, in the years 1703 and 1704, seven acres of pease, drilled out of the hand after the plough, and not after the spade, in garden-like manner ; but insisted that the plaintiff has no right to any tithes of pease or beans planted in the fields after the plough, and not managed with the spade, although the same be set, drilled, or sowed in ranks, and weeded or hoed.

The plaintiff replied ; the defendant rejoined ; and divers witnesses were examined ; and upon reading the depositions,

The tithes of honey, wax, eggs, and herb-
age decreed.

IT IS ORDERED AND ADJUDGED BY THE COURT, that the defendant do pay to the plaintiff the tithes of honey, wax, and eggs, and for depasturing one hundred wethers, according to his answer ; the deputy remembrancer to take the said account.

A case made as
to pease, beans,
and fish.

As to the tithes of pease, beans, and fish, it was ordered, that a case be made and stated, and THE BARONS attended therewith ; the cause to be contained in the paper for the judgment and opinion of the Court upon the said case.

The cause came on the twenty-eighth of *June* 1711 to be further heard upon the case ; and upon debate of the matter,

The tithes of
the pease and
beans decreed ;
but fish in a
pond not tithe-
able of common
right.

THE COURT (a) is of opinion, and do declare, that the varying the manner of preparing the ground for such setting and sowing from the spade, or spade and plough to the plough alone, shall not alter the right of the tithes so as to entitle the impropriator to them when the ground is prepared by the plough alone, although such pease and beans are set,

(a) Signed by EDW. WARD, Lord Chief Baron, THO. BURY, RO. PRICE, S. LOVELL.

sowed.

sowed, and cultivated in the same manner as they were when the spade or spade and plough were used for preparing the ground; and that fish in a pond are not titheable without a custom.

NICHOLAS
against
ELLIOT.

WHEREUPON IT IS THIS DAY ORDERED BY THE COURT, that as to such part of the plaintiff's demand which relates to the tithe of fish, the defendant be dismissed; and that the defendant do account with, satisfy, and pay to the plaintiff for the tithe of all pease and beans set, drilled, or sowed in rows, or ranks, which are hoed or weeded with the hoe in a garden fashion within the parish of *Shalford*, planted by the defendant; the deputy remembrancer to take the said account (*b*).

(*b*) See this decree confirmed in other cause, Hilary Term, 1. Geo. 1.; another contested cause of Nicholas v. another cause, Trinity Term, 10. Geo. 1. Austen, Easter Term, 1. Geo. 1.; an-

SPATEMAN *against* KNOW.

Kent, 19th February 1710.

HILARY TERM
9. Q. ANNE.

THE rector of *Leybourne*, in the county of *Kent*, claimed tithes of wood.

The woodlands situated in *Little Leybourne*, in the county of *Kent*, are within the *Wealds*, and tithe free.

The defendant confessed, that ten years ago he purchased from *Mr. Clarke* forty-nine acres of woodland, situated in *Little Leybourne*, otherwise *Little Comp*, in the *Weald of Kent*, distant three miles from *Leybourne*, and a distinct parish; and that he cut about twenty-five acres of the same, and made thereof core wood, brush wood, or spray broom, staves, hop poles, and bark, but said, that as the woods lie in the *Weald of Kent* they are exempt from tithes.

An issue was directed to try, "Whether the said woodlands are within the *Weald of Kent*, or without the said weald?" and upon a full evidence given on both sides, a verdict passed for the defendant.

THE COURT therefore dismissed the bill.

ISAACK *against* PORTBURY.

Cornwall, 7th May 1711.

EASTER TERM,
10. Q. ANNE.

THE inhabitants, owners, and occupiers of lands in the parish of *Northill*, in the county of *Cornwall*, filed their bill to establish the following *modus*es payable to the rector in lieu of tithes. For the offerings of a man and his wife communicating, threepence. For a widow or widower communicating, one penny halfpenny. For every other single person communicat-

Several modes of tithing in the parish of *Northill*, in the county of *Cornwall*, confirmed and established.

ing,

ISAACK
against
PORTBURY.

ing, one penny. For every cow that hath a calf, called a renewed cow, one penny, in discharge of the tithe milk of such cow. For every veere cow, one halfpenny, in discharge of the tithes of every such cow. For every milch ewe, one farthing, in lieu and discharge of the tithe of milk of such ewe. For every colt foaled in the said parish, one penny. For every hogthead of cyder, made of apples grown in the said parish, twopence, in lieu and satisfaction of the tithes of such apples and cyder. For every garden, one penny, in lieu and satisfaction of the tithes payable to the rector for such garden, and the herbs, fruits, and roots grown therein. For every calf fallen in the said parish, where the parishioner hath under the number of seven there fallen in any one year, and not more, which shall be reared, one halfpenny, and for every one that shall be killed one penny, in lieu of the tithes of such calves so under the number of seven. For every lamb fallen in the said parish, where the parishioners hath under the number of seven there fallen, and not more in one year, one farthing, in lieu of the tithes of such lambs so under the number of seven. For every pig fallen in the parish, if any person hath under the number of seven there fallen in any one year and not more, one farthing, in lieu of the tithes of such pigs under the number of seven. For geese and gollings, if under the number of seven, for every one, one farthing: all which *modus*es and customary payments are payable at *Easter*, yearly. For grafs grown in the parish, when cut and made into hay, the tenth pook or cock, after first putting the same into grafs cocks, before the same be again cast abroad, for the tithe of such grafs and hay. The rector ought to keep a bull and a boar for the use of the parishioners.

The defendant insisted upon tithes in kind of all the things titheable for which the said *modus*es are pretended to be payable.

THE COURT confirmed and established the said customs and *modus*es.

MICH. TERM,
23. Q. ANNE.

LORD STAMFORD against LUKE.

Cornwall, 25th October 1711.

A tenth part of all fish caught at sea, and brought into *St. Ives* for sale, is due to the impropiator of the rectory; and the fishermen are

THE impropiator of the town and parish of *Saint Ives*, in the county of *Cornwall*, claimed, by immemorial custom, the tenth part of all fish taken within the said town, parish, and rectory, or the titheable places thereof, or at, in, or upon THE SEA, and brought into the said town, parish, or rectory for sale. The bill stated, that in and about the sea, within the

bound to give notice to the impropiator of the arrival of the fishing boats, and of the time of tithing, and to set forth upon the shore the full tenth part of the fish brought in.

said

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saïd parish, there hath, time immemorial, been used great fishing for pilchards, herrings, and other fish, by persons living within the saïd town, rectory, or parish of *Saint Ives*, for sale and otherwise; that such fish are usually brought by the saïd fishermen into the saïd town, rectory, or parish, and there unshipped and laid on land; and that, by custom immemorial, the tenth part of the same ought to be delivered to the rectors or impropiators; that, by the saïd custom, the fishermen bringing fish are obliged, upon the arrival of the vessels and fishing boats in the saïd town, parish, or rectory, and bringing the fish on land, to give notice to the rectors or impropiators, and after such notice given to set forth upon the shore the full tenth of the saïd fish.

The defendants admitted, that the plaintiff was owner of the rectory, and entitled to the tenth part of all fish taken in the saïd parish, or upon the sea, and brought into the saïd parish for sale or otherwise, or to some *modus* or composition in lieu thereof; but denied that they or any other fishermen, inhabitants of the saïd parish, are, by any custom immemorial, obliged to give notice to the impropiators of the arrival of their fishing boats to the shore, but that the plaintiff's agent had always made it his business to attend the arrival of such boats with pilchards and herrings and other fish, and to demand the tenth thereof, which was accordingly paid to him; and they described the particular manner of setting out such tithes. They saïd also, that several inhabitants of the saïd parish had, for several years past, taken, in *Mounts Bay*, several quantities of pilchards, in drift boats and nets, and cured them in cellars in the saïd *Mounts Bay*, six or seven miles distant from the saïd town and parish of *Saint Ives*; and that the customary payment for all such tithe fish taken without the saïd parish had been immemorially, and is now to pay two shillings a hoghead in lieu thereof; that the agents for taking such tithe fish had themselves bought considerable quantities of such remote taken fish, and that they accounted with their employers after such rate *per* hoghead; that they never knew or heard of tithes in kind being paid for such remote taken fish, but that the same was compounded for as aforesaid. They also denied, that the fishermen taking such remote fish are obliged to give notice to the impropiator of the time and place of tithing the same; the hogheads containing such remote taken fish being exposed publicly in the cellars, they remained for the saïd agent to number the same, and to charge every particular owner the rate aforesaid *per* hoghead.

The plaintiffs replied; the defendants rejoined; and several witnesses were examined on both sides; and upon opening the bill, and reading an order dated the seventeenth of *May* last, whereby the saïd defendants were to appear *gratis* at the hearing,

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ing, and on reading the answer of the said defendants, they making default, and not attending with their counsel, it appeared to the Court, that the tithe of fish was due by the custom and usages of the said parish and rectory; and that the fishermen were obliged to give notice to the impropriator, his rector, or agent, of the arrival of the vessels and fishing boats, and of the time of tithing; and after such notice to set forth upon the shore the full tenth or tithe of the said fish.

IT IS THEREUPON ORDERED AND DECREED, that the defendants shall satisfy the plaintiffs for the value of the tithes of all the pilchards and herrings by them caught and taken at sea and brought into the said town, parish, or rectory impropriate of *Saint Ives*, and the titheable places thereof, within the time in the bill mentioned; the deputy remembrancer to take the account.

HILARY TERM
10. Q. ANNE.

TILLOTSON *against* CHALLIS and Others.

Cambridgeshire, 22d February 1711.

The tithes of hemp, flax, and coleseed, in the parish of *Elme*, in *Cambridgeshire*, and *Emmeth*, in *Norfolk*, belong to the rector, and not to the vicar.

THE plaintiff *Jarvis*, as lessee of *Dr. Tillotson*, rector of *Elme*, in the county of *Cambridge*, with the chapel of *Emmeth*, in the county of *Norfolk*, annexed, claimed the tithes of coleseed, hemp, and flax; and stated, that the defendants *Tivey*, *Marsh*, and *Ward*, had, in the year 1710, sowed their lands with hemp, and flax, and coleseed, the tithes of which ought to have been in kind to the plaintiff *Jarvis*; but that the said defendants, combining with the defendant *Challis*, the vicar, pretended that no tithes of the kind are due to the plaintiffs, they being in their nature *small tithes*, and as such payable to the vicar, who claims the same, and had indemnified the other defendants.

The defendants *Tivey*, *Ward*, and *Marsh* said, that they had been acquainted with the custom of tithing in *Elme* and *Emmeth* for twenty years, they having been employed by the vicars and the tenants of the rectory to collect the tithes; that they knew the first crop of *flax* that was sown there, the tithe whereof they believed was received by the rector, who had since continued to do so; that the tithes of *coleseed* was several times contested by the vicars and the lessees of the rectory, and that sometimes the one, and sometimes the other received such tithe, as the humour of the parishioners prevailed; that the rector, for the most part, received the tithe of *hemp*; that the tithe of *coleseed* was payable in kind, but that the tithe of *hemp* and *flax* was under a *modus* of four shillings an acre, and that all the tithes were to be paid before the crops were removed off the premises.

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The defendant *Challis* said, that he was, and had been vicar of *Elme* and *Emmeth* since *October* 1709; that he ought to receive all small tithes, and, amongst the rest, the tithes of coleseed, hemp, and flax, they being small tithes in their nature; that an immemorial usage, concerning the payment of coleseed and flax, could not be made out, the sowing of them being a late improvement; that the rectors and vicars have contested the tithe of coleseed; and that, although the rectors or their tenants had, for the most part, received the tithes of hemp and flax, it was through the inadvertency of the vicars; that he had received of the defendants *Ward* and *Marshall*, for the year 1710, the tithes of coleseed, hemp, and flax, and had given them a bond of indemnity.

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against
CHALLIS
AND OTHERS.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading a register book belonging to the *Bishop of Ely*, and an agreement or award made by the said bishop between the rector and vicar, and a decree of this Court between *Widdrington, D. D.* against *Barker*, dated the seventeenth of *June*, in the twenty-seventh year of *Charles the Second (a)*, and on full debate of the matter,

THE COURT declared, that in this cause the tithes of coleseed, hemp, and flax, within the said rectory and chapelry, did belong, and ought to be paid to the rector, and not to the vicar (*b*).

(a) Ante, page 145. See also *Fish v. Wimberly*, ante, 222.

(b) *Challis*, the vicar, afterwards filed his bill against *Jarvis*, the lessee of *Dr. Tillotson* and others, for the tithes of hemp, flax, and coleseed. The defendants insisted that they were not new im-

provements, and had been, time out of mind, sown in the parish in great quantities, and that the tithes thereof belonged to the rector, and not to the vicar; and THE COURT, on reading the proofs, dismissed the bill. Book of Decrees and Orders.

SKINNER against GOODERE.

Essex, 21st February 1711.

HILARY TERM
II. Q. ANNE.

THE plaintiff, as master of *Ilford Hospital*, stated that the said hospital of *Ilford*, in the county of *Essex*, hath, time out of mind, been an ancient hospital, endowed with divers manors, lands, tenements, rent services, tithes, oblations, profits, &c. by divers abbesses, for the time being, of the abbey or convent of *Barking*, and other charitable and well-disposed persons; that the said hospital, by reason of such endowments, or in some other manner, hath anciently been entitled to the

The master of *Ilford Hospital*, in the county of *Essex*, is entitled, in right of the charity, to all tithes, both great and small, and to an annual rent of *xl. 13s. 4d* from *Clay-Jenkins, Eastbury*, *40s.* a year from or to the half

bury Farm; and also to the tithes of the lands called *the Ships, Winderlands, Westbury*, in the parish of *Barking*; to *40s.* a year from the vicar and to the miller of *Barking*; but not to the half calf and half cheese of *Westbury Farm*; calf, half cheese, half lamb, and half wool of *Jenkins Farm*.

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tithes of the several lands, rents, benefits, and advantages mentioned in the bill; that the patronage, advowson, donation, right of patronage, and free disposition of the said hospital anciently belonged to the abbess or convent of *Barking*; that afterwards, by virtue of several acts of parliament, or in some other lawful manner, *Queen Elizabeth* became legally entitled to the said patronage, &c. and by her letters patents dated the twenty-third of *April*, in the fourteenth year of her reign, did give and grant, for herself and successors, to *Thomas Fanshawe*, then her majesty's remembrancer in the exchequer, and to his heirs and assigns for ever, the patronage, &c. of the said hospital, and all rights and jurisdictions thereto belonging; and by the said letters patent did further will and grant, that he and his heirs should have and enjoy the same for ever as fully as her said majesty had enjoyed the same, as in the said bill is mentioned; that, by the several conveyances in the said bill mentioned, *J. Thrale* became legally entitled to the patronage, &c. of the said hospital, and to the right of nominating a master or keeper of the said hospital, and all and singular other rights, jurisdictions, and privileges whatsoever relating thereto; that, the mastership being vacant, he did, by deed dated the tenth of *July* 1703, nominate the plaintiff to the office, with all rights, &c. belonging thereto, for life, by virtue whereof, as master, he became well entitled to the several lands, &c. belonging thereto, and ought to have received the same for the support of the said charity; that there are, and anciently hath been, belonging to the said hospital all the tithes, both great and small, arising out of a farm or certain lands in the parish of *Barking*, called *Claybury*, which have been anciently and annually paid to the master, for the time being, for the maintenance and support of the said charity, which said lands consist of two hundred acres, and have been in possession of the defendant *Goodere*, or her agents, ever since the tenth of *July* 1703; and that the tithes are annually worth twenty pounds, which in the whole amount to one hundred pounds; that she had cut and carried away all the corn and hay arising from the premises each year, without setting out the tithes thereof, or making any satisfaction for the same, and had several other titheable matters and things; that, for the said farm or lands there hath been anciently paid, and ought to be paid, a yearly rent of one pound, thirteen shillings, and fourpence, issuing out of the same, belonging to the said hospital, and payable to the master thereof by the tenant or occupier of the said farm, but which the said defendant had neglected to do, and that the same amounts to eight pounds, six shillings, and eightpence; that, from the said time, the other defendants have been tenants of certain lands called *the Skips*, *Winderlands*, *Jenkins*, *Eastbury*, and *Westbury*, in the parish of *Barking*, and also of lands in the parish of *Ilford*, called

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from which they have reaped corn and hay, the tithes of which amount to a great sum, which they have all refused to pay; that anciently, and time out of mind, there hath been issuing out of the vicarage of *Barking* one yearly rent of forty shillings, belonging to the said hospital, and payable to the master thereof by the vicar; that the defendant *Chiffenball*, for the said time, hath been vicar there, and ought to have paid the said annual rent of forty shillings, amounting now to ten pounds; that the said defendants have respectively refused to pay the same, and to discover their deeds, &c. or to make any recompence to the plaintiff. The bill therefore prayed, that the plaintiff may examine witnesses *to perpetuate their testimony* for making out the truth of the said matters; that the defendants may discover the several titheable matters which have arisen from their respective premises, and the values thereof; that the right of the plaintiff and the hospital to the premises may be ascertained and preserved; and that the defendants may be respectively decreed to pay to the plaintiff the rents and tithes due to him as aforesaid.

The defendant *Goodere* admitted that she held the farm called *Claybury*, and had cut and carried away the corn and hay therefrom without setting out the tithes, or making any satisfaction for the same; and that she had refused to pay the same, and the said rent of one pound, thirteen shillings, and fourpence. And all the defendants submitted the plaintiff's title to the judgement of the court at the hearing. They admitted that they held the several farms and lands in the bill mentioned, and had reaped and carried away their corn; but insisted that they had constantly paid their tithe of corn to the plaintiff or his agents; that they had not paid any tithe for feeding land; that the same, or most part thereof, had been eaten by their team horses, or other cattle, and that the yearly tithes were not worth more than fourpence an acre.

The defendants *Merchant, senior*, and *Glover, senior*, said, that the vicar of *Barking* claimed fifty shillings a-year as a *modus* for a moiety of the small tithes arising from *Westbury Farm*.

The defendant *Goodwin* said, that *Glover, senior*, took the great tithes of some part of the lands he held as tenant of *Eastbury Farm*, and that the vicar of *Barking* took the small tithes.

The defendant *Glover, junior*, said, that the tithes of one hundred and sixteen acres, lying at *Upney Maybrooks* and in *Eastbury Level*, have been taken by the impropiators of the parish church of *Eastbury*.

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The

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against
GOODERE.

The defendant *Chiffenhall* admitted that he had been vicar of the parish of *Barking* ever since 1703, and said that he knew not that there is, or hath, at any time, been issuing or payable out of the vicarage of *Barking* the yearly rent of forty shillings, either to the said hospital, or to the use thereof; but he confessed, that about two years since he was required to pay the tithes due to the hospital, which he had refused to do.

The defendant *Wells* said that he had been miller of *Barking* for several years, but knew not that anciently any rent or sum of forty shillings hath been issuing out of *Barking Mills*, as belonging to the hospital, and payable to the master thereof by the miller of *Barking*, for that he had never paid the same, nor was the same to his knowledge or belief ever paid.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the bill, answers, and depositions taken in the cause, and the deed poll dated the tenth of July 1703, whereby *J. Thrale* appointed the plaintiff master of the said hospital; also a copy of a decree in chancery dated the thirtieth of May, in the ninth year of *King James, Fifth, D. D.* plaintiff, master of the said hospital, and *Fabian*, rector of *Warleigh*, and others, defendants; a copy of a judgment obtained in *Easter Term*, in the nineteenth year of *King James*, by *S. A. Harris*, master of the said college, and *R. Hale*, for four pounds ten shillings, for subtracting the tithe of hay from off part of the farm called *Claybury Farm*; the exemplification of a commission under the seal of her majesty's court of exchequer, granted in the twenty-second year of *Queen Elizabeth* to several persons to inspect and survey the several lands, rents, and tithes which did belong to the said hospital, and the commissioner's certificate thereupon; a lease made in the twenty-ninth year of *Henry the Eighth* from *Dame Dorothy Bartee*, the abbess of *Barking*, and the convent of the same place, of the *Mills of Barking*, wherein was reserved a rent of forty shillings a-year to the hospital of *Ilford*; and two ancient rentals in the time of *Richard the Second* and *Henry the Seventh*; and upon long debate of the matter,

THE COURT declared, that the tithes of the several farms and lands in kind (except *half calf* and *half cheese* arising out of *Westbury Farm*, and except *half calf*, *half cheese*, *half lamb*, and *half wool* arising out of the farm called *Jenkins*); and also the several yearly rents in the bill mentioned; viz. the yearly rent of one pound, thirteen shillings, and fourpence issuing out of the farm and lands called *Claybury*, in the occupation of the defendant *Goodere*, and the yearly rent of forty shillings issuing out of *Barking Mills*, in the occupation of the defendant *Wells*,
and

and the yearly rent of forty shillings issuing out of the vicarage of *Barking*, did of right belong to the hospital of *Ilford*, and ought to be paid and answered to the plaintiff as master or keeper of the said hospital.

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against
GOODERE.

AND IT IS THEREUPON ORDERED AND DECREED BY THE COURT, that the several defendants shall account with, satisfy, and pay to the plaintiff the value of the several tithes and tithe-ble matters and things, both great and small, which have yearly arisen from, or grown due in respect of, the several farms and lands mentioned in the bill to be in their several and respective occupations (except half calf, and half cheese, of the said farm called *Westbury*, and except half calf, half cheese, half lamb, and half wool, of the said farm called *Jenkins*) since the tenth of *July* 1703, and that the defendants *Goodere*, *Wells*, and *Chiffenball*, vicar of *Barking*, shall account with, satisfy, and pay to the said plaintiff all arrears of the before-mentioned several and respective yearly rents from them respectively due and payable from the said tenth of *July* 1703; and it is referred to the deputy remembrancer to take the said accounts between the parties; and upon reading an affidavit of service of *subpœna* to hear judgment upon the defendant *Goodwin*, and upon reading his answer, it is ordered by the Court, that he shall likewise account for the value of his tithes; and it is referred to the said deputy to take the said account, unless cause be first shewn; he paying five pounds costs before he be heard. On the twenty-sixth of *May* 1712 the above decree was made absolute against the defendant *Goodwin*.

EDW. WARD.
THO. BURY.
RT. PRICE.
S. LOVELL.

BRETT against FRANKLYN.

EASTER TERM
II. Q. ANNE.

Kent, 22d *May* 1712.

THE rector of *Reuking*, in the county of *Kent*, claimed the tithes of a parcel of wood felled in 1708 in a wood called *Bourne Wood*, in the parish of *Reuking*.

The part of *Bourne Wood*, which lies in the parish of *Reuking*, in the county of *Kent*, is within the *Weald* of *Kent*, and tithe free.

The defendants said, that they had bought of *Sir P. Boteler* some wood growing in *Bourne Wood*, but that the plaintiff had no right to the tithes thereof, because the part of *Bourne Wood*, within which the said wood was felled, was in the *Weald* of *Kent*, and so by custom and usage, time out of mind, tithe free.

An issue was directed to try, before a special jury, of which no inhabitant of the *Weald* should be a juror, "Whether that

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" part

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“ part of *Bourne Wood*, which is in the parish of *Reuving*, be in
“ the precinct called *the Weald of Kent*, or not ?” and the
jury, after six of them had taken a view, gave a verdict for the
defendants.

THE COURT therefore dismissed the bill, with costs in law
and equity.

HILARY TERM,
11. Q. ANNE.

UNDERWOOD against GIBBON.

Suffolk, 24th February 1712.

The lessee of the
church of *Saint*
Gregory and the
chapel of *Saint*
Peter, in *Sudbu-*
ry, claims the
tithes of *School-*
house Field,
King's Marsh,
Portmancroft,
the Common of
Sudbury, and the
Nonsuch Field.

S. C. Bunb 3.

THE bill stated, that *Nathaniel Jeykill*, being impropriator of
the rectory impropriate and parish of *Saint Gregory*, in *Sud-*
bury, in the county of *Suffolk*, did, by his deed tripartite, dated the
ninth of *June 1710*, demise to the plaintiff all the tithes, of what
nature soever, belonging to the said rectory and parish, and the
titheable places thereof, to hold for three years, if he should so
long live ; and that *O. Andrews*, *J. Craddock*, and *P. Barker*, or
one of them, being impropriators of the parish or chapelry of
Saint Peter, in *Sudbury* aforesaid, did, by indenture dated the first
of *July 1710*, demise to the plaintiff all the tithes arising therein
for three years ; by virtue of which leases the said *G. Underwood*
became entitled to all the tithes, of what nature, kind, or
quality soever, arising in the said respective parishes and cha-
pelries, and the titheable places thereof, from *Christmas 1709* ;
that the defendant *Gibbon*, during that time, held a piece of
ground, called *Schoolhouse Field*, lying therein, from which he
had cut hay, and on which he had fed and depastured
divers horses and dry cattle, and made great profit thereof ;
for all which he ought to have paid to the plaintiff the tithes of
hay and tithe herbage, or some composition for the same ; and
that the other defendants had respectively, during the time
aforesaid, several titheable matters.

The defendants
say, that *King's*
Marsh, *Port-*
man's Croft, and
the Common, be-
long to the cor-
poration, who
receive certain
sums for the de-
pasturing of cat-
tle thereon, and
bestow the same
on the poor ;
and that no
tithes for so
depasturing the

The defendants admitted, that *N. Jeykill* was impropriator of
Saint Gregory's, and as such entitled to all tithes therein ; and
that he had made such lease to the plaintiff ; but they knew not
that the said *Andrews* and others were impropriators of *Saint*
Peters, or were entitled to any tithes there, or that they had made
such lease. They said, that *Saint Peter's* is a chapel of ease an-
nexed to the parish-church of *Saint Gregory* ; and that the tithes
thereof do belong to the impropriator of *Saint Gregory*. They
also said, that they had kept upon two pieces of land, called
King's Marsh and *Portisman Croft*, otherwise *the Common*, and
upon certain other lands which are common to the freemen of
the same after the first crop, are due ;

Sudbury

Sudbury, after the first crop of corn and hay is carried off from the same by the occupiers, several horses, for which there were not any tithes due; that the said grounds, called *King's Marsh* and *Portman's Croft*, were anciently given to, and for the use and benefit of the burgessees and community of, *Sudbury*, by *Sir Richard De Clare*, the owner of the said borough and all tithes arising therein; that it has been customary, time out of mind, for the corporation of the said borough to set certain rates upon all cattle that have been depastured thereon; and that such rates, or the greater part of the monies thereby raised, have been paid and applied to and for the use of the poor of the borough of *Sudbury*; and that never any tithes were paid or demanded for the herbage of cattle kept there; and that they knew not whether the aforesaid pieces of land lie within the said parishes. They also insisted, that no tithes were due for the *after pasture* of any the other lands in respect of the tithes paid for the *first crop* of the same.

UNDERWOOD
against
GIBBON

The defendant *Gibbon* admitted, that he held and occupied a piece of ground, called *the Schoolhouse Field*, lying in the parish of *Saint Gregory*, and that he had cut grass thereon, and made the same into hay, and had fed his horses thereon, the tithes of which were worth ten shillings.

that the tithes of
Schoolhouse Field
are worth only
10s.

The defendant *Starling* said, that he, together with several other persons undertakers for the making the river *Stour* navigable, were joint purchasers of the ground called *the Nonsuch*, lying part in the parish of *Saint Gregory*, and that they jointly held the same, and thereon kept horses, and mowed hay, for the joint use of all the proprietors of the said navigation; and therefore says that he should not be sued alone for the tithes thereof. But he insisted, that no tithes ought to be paid, or are due for the same, for that the said ground did formerly belong to the dissolved monastery of *Friars* in *Sudbury*, and so is, by the several descriptions and provision in the several acts of parliament made for the dissolution of monasteries, exempt from the payment of tithes, they never having paid any tithes before.

That the land,
called *Nonsuch*
Field is only used
by the proprie-
tors of the river
Stour for the
purposes of the
navigation; and
that it formerly
belonged to
Friars Monastery
and is tithes free.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

IT IS ORDERED BY THE COURT, that the defendants do respectively account for their tithes had, kept, fed, or depastured upon the lands called *the Nonsuch Field*, except upon that part thereof which lies on the side of the river *Stour*, and upon the *Schoolhouse Field*, the *King's Marsh*, and *Portman's Croft*, otherwise *the Common*; and that they shall respectively satisfy and pay to the plaintiff the values thereof; but that the defendants are not to account for any tithes for the *after pastures* of any of the

The tithes of first
crop of *Nonsuch*
Field on one side
the *Stour*, and of
Schoolhouse Field,
King's Marsh,
and *Portman's*
Croft, decreed.

But not of the
after pastures.

UNDERWOOD
against
GIBBON.

the said grounds or fields whereon crops of corn or hay were had in the same year. The plaintiff to have his costs (a).

(a) The plaintiff *Underwood*, as lessee of the church of *St Gregory* and chapelry of *St Peter*, in *Sudbury*, filed his bill in this court, in Hilary Term, 10 Anne, against *Drew* and *Hazel*, for the tithes arising on two gardens and certain lands called *Grego y's*. The defendants insisted, they were parcel of the college of *St. Gregory* in *Sudbury*; that they were held together with the said rectory, and that the revenues of them altogether were above 200*l.* a year; that they were surrendered tithe free to *Henry the Eighth*, who had granted the said college and rectory and lands aforesaid to *Sir Thomas Patton* and his heirs, and from them they were, by divers mesne conveyances, vested in the defendants; and that as no tithes had ever been paid, or even demanded for the said lands, the non-payment was evidence, as against a lay impropriator, of their having been legally discharged from tithes; and the Court, on reading the depositions, took time to consider of the claimed exemption, but afterwards ordered the defendants to

account with the plaintiff for the tithes of the lands pretended to be exonerated.— On the 10th June 1714, the plaintiff *Underwood* also filed another bill against *Sparrow*, one of the defendants in the principal case, for the tithes of lands lying beyond *Holgate* and in *Gulfield*, otherwise called *Gilfield*, in the *Roads* and in *Coldreys*; and on reading an indenture, dated 22d February, in the twenty-seventh year of *Henry the Eighth*; a surrender of the abbey of *Westminster* to the crown, dated the 16th January, in the thirty-first year of *Henry the Eighth*; a charter to the said abbey, dated the 11th May, in the second year of *Queen Elizabeth*; and a record of a prohibition, in the twenty sixth year of *Queen Elizabeth*; a trial at law was directed, in an action of debt on the statute 2. & 3. *Edw.* 6. c. 13. and the verdict found, that *Sparrow* was not indebted to the plaintiff in any sum for the tithes subtracted.—See also other causes, Trinity Term, 1 Geo. 1. Trinity Term, 19, Geo. 3.

TRIN. TERM,
22. Q. ANNE.

HASON against YALLOP..

Norfolk, 2d July 1713.

There is a *modus* in the parish of *Yelverton*, in *Norfolk*, of three halfpence a cow and three halfpence a calf, in lieu of all tithes thereof; and turnips pulled to feed milch cows with shall pay tithes in kind.

THE rector of *Yelverton cum Alspington*, in the county of *Norfolk*, claimed tithes of turnips, cows, and calves.

The defendant said, that her own cows, except one bullock, were fed with the turnips she had growed; and that as such turnips yield but little profit to the occupiers, and are only sowed to prepare the land for a better crop of grain the year following, and were pulled to feed the cows with, both of which are benefits to the minister, by improving the quantities of corn and milk, no tithes ought to be, or ever had been, paid for the same; that there was a *modus* of three halfpence for each cow, and three halfpence for each calf, in lieu of all tithes arising from such cow and calf.

THE COURT ordered the defendant to account for the tithes of turnips grown upon the several lands which were drawn by her, or by any other person or persons by her order or consent; and also to pay three halfpence for each cow, and three halfpence for each calf, for the lactage and profits arising from the said cow and calf, according to the *moduses* set forth by her answer.

BEAN

BEAN *against* LEE.TRIN. TERM,
12. Q. ANNE.*Kent, 2d July 1713.*

THE vicar of *Lidd*, in the county of *Kent*, claimed the tithes of hay, lambs, wool, calves, pigs, geese, eggs, and all other vicarial tithes arising therein.

The defendants admitted the plaintiff's right to all tithes (except of corn and grain), or to some *modus* or customary payment in lieu thereof; and said, that no tithes of hay, lambs, wool, calves, pigs, eggs, agistment or other vicarial tithes, ever were or ought to be paid in kind to the vicar of the said parish; for that, time out of mind, there had been a custom, usage, or *modus decimandi* in the said parish, that all the occupiers of any marsh, meadow, or pasture land in the said parish, should pay, in lieu and satisfaction of the tithes of hay, lambs, wool, calves, colts, pigs, honey, eggs, wax, fruit, agistment, and all other small and vicarial tithes arising upon the said lands, the yearly rate or sum of one shilling in the pound, and so proportionably for every greater or lesser sum than a pound, according to the yearly rent of such of the said lands as were rented or letten at a full or rackrent without fine, and according to the yearly value of such lands as were not letten at a full rent without fine; which rent or customary payment had been constantly received by the vicar of the said parish for the time being, in full satisfaction and discharge of the said tithes.

A *modus* to pay 1s. in the pound on the yearly rent of rack rented farms, and the yearly value of farms underlet, in lieu of vicarial tithes, is bad.

S. C. Rayn. 122.
S. C. 3. Burn's
E. L. 408.
See post. the
case of Shafter
v. Mitchel, 15th
July 1715, Tri-
nity Term, 1.
Geo. 1.

The cause came on to be heard on the twenty-second of *June* last, and the further hearing was adjourned to this day; when upon reading the answers and several depositions, a doubt arose, whether the *modus* in question, as set forth, was a good *modus* in law, or not; and the Court ordered a case thereof to be made, and signed by counsel on both sides, in the words following:

THE CASE. "The plaintiff, as vicar of *Lidd*, by his bill, de-
mands the tithes in kind of hay, lambs, pigs, turkies, hens,
geese, calves, milk, honey, wax, and agistments, &c. The
defendants, by their answers, admit the plaintiff is vicar of the
said parish, and is thereby entitled to all the tithes arising in
the said parish (except the tithes of corn and grain), or to
some rate, *modus*, or customary payment, in lieu thereof; and
say they believe, and doubt not but to prove, that no tithes of
hay, lambs, wool, calves, pigs, eggs, agistment, or any other
small or vicarial tithes, were ever paid, or ought to be paid
in kind to the vicar of the said parish for the time being; but
that there is, and time out of mind has been, a custom, usage,
or *modus decimandi* in the said parish, that all the occupiers of
marsh, meadow, and pasture land in the said parish have used
to pay yearly, for all the said marsh, meadow, and pasture lands
by them respectively used and occupied in the said parish, to

" the

BEAN
against
LEE.

“ the vicar of the said parish for the time being, in lieu and
“ satisfaction of the tithes of hay, lambs, wool, calves, colts, pigs,
“ eggs, honey, wax, fruit, agistment, and all other small and
“ vicarial tithes arising upon the said lands, the yearly rate or
“ sum of one shilling in the pound, and so proportionably for
“ every greater or lesser sum than a pound, according to the
“ yearly rent of such of the said lands as are rented or letten at
“ a full or rack rent without fine, and according to the yearly
“ value of such lands as are not letten, or not letten at a full
“ rent without fine as aforesaid.”—THE QUESTION is, whether
this *modus*, as laid, be a good *modus* in law, or not ?

Upon hearing counsel on both sides, and on full debate of the matter,

THE COURT was unanimously of opinion, and did declare, that the *modus* in question, as laid and insisted on by the defendants in their answer, and stated by the case, is a void *modus* in law.

IT IS ORDERED BY THE COURT, that the said defendants shall severally account with, satisfy, and pay the plaintiff for the tithes of hay, lambs, wool, calves, pigs, geese, eggs, and all other vicarial tithes, which were yearly arising upon the defendant's lands and tenements within the said parish during the time in the bill mentioned ; and it is referred to the deputy remembrancer to take and report the said account.

EDW. WARD.
THO. BURY.
RO. PRICE.
WM. BANASTRE

TRIN. TERM,
12. Q. ANNE.

NAUNTON *against* CLARKE.

Suffolk, 3d July 1713.

The owner of
Letheringham
Park, in the pa-
rish of *Lethering-*
ham, in *Suffolk*,
pays yearly a
buck and a doe
to the impropri-
ator, in lieu of
all tithes of the
said park, whe-
ther the same
be plowed, sow-
ed, mowed, or
agisted.

THE impropriator of the parish of *Letheringham*, in the county of *Suffolk*, claimed the tithes of corn, hay, and other great tithes belonging thereto.

The defendant said, that the plaintiff was entitled to the tithes of the said parish, except the tithes arising on lands called *Letheringham Park*, and that he had usually received a composition in money for all such tithes, except as aforesaid, but that for two years past he had taken tithes in kind of all the defendant's corn lands in the said parish, except of the lands in *Letheringham Park*, and had not at any time demanded tithes in kind for any of the lands in the said park, or any thing in lieu thereof ; that in the year 1700 he had hired great part of the lands called *the Park Lands*, tithes free, and had so enjoyed the same until *Michaelmas* last ; that the said lands contained about two hundred

hundred acres, which were anciently a park, and are still inclosed, and that no tithes were payable for the same, or any corn growing therein, but that an ancient *modus* of a buck and a doe in season, yearly, on demand, were payable to the impropriator, in lieu of all the tithes thereof; that the same had been yearly accepted by the impropriator; that, until about twenty years past, the impropriator had sold such buck and doe for a small sum of money; and that, under such *modus*, the said park lands had immemorially been held free of all other tithes, though the same were ploughed, sowed, mowed, or agisted; that on his hiring the said park, it was agreed, that ten brace of deer should be kept in a part of the said park to answer the said *modus* yearly, if demanded, and which was accordingly done; but that the plaintiff had never demanded the same, or any money in lieu thereof, or any tithe in kind, or any satisfaction for the same; that he had duly paid for the tithes of his other lands in the said parish which were not part of the said *Park Lands*; and he insisted, that the *Park Lands* were tithe free. He also averred, that from the year 1700 to 1705 there was a sufficient number of deer kept inclosed in the said park to answer the delivery of such buck and doe, but that the plaintiff, during all that time, had never demanded any; and that therefore he concluded, the plaintiff would have been satisfied with a payment in money for the same.

NAUNTON
against
CLARK.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and on debate of the matter,

THE COURT, being satisfied that there was such a *modus* for the said park as was insisted on by the defendant's answer, ordered the defendant forthwith to pay to the plaintiff thirty pounds in full for the values of the said bucks and does for the time demanded by the bill, but without costs on either side.

JA. REYNOLDS.
LAW. CARTER.
WM. THOMSON.
WM. FORTESCUE.

DUNBAR *against* ST. JOHN.

Essex, 19th November 1713.

MICH. TERM,
12. Q. ANNE.

THE vicar of *Kelveden*, in the county of *Essex*, stated, that by ancient endowment, or by usage within the said parish, the vicar there ought to take, receive, and enjoy the tithe of all underwood felled therein.

The defendant *Abbey* set forth, that she held a wood in the said parish, called *the Eight Acre Wood*, which, in 1707, she caused to be felled and cut down; and she set forth the tithes thereof;

The tithes of underwood cut in the parish of *Kelveden*, in the county of *Essex*, belong to the impropriator and his lessors, and not to the vicar.

DUNBAR
against
ST. JOHN.

thereof ; and said that the defendant *Leapenwell*, after the tithe of wood was so set out, took and carried away and disposed of the same as undertenant of the tithes to the other defendant *St. John*, who is the lessee of the *Bishop of London*, the impropriator of the rectory impropriate of the said parish ; and she insisted on their right so to do : and all the defendants insisted, that the tithes of all *underwood* felled in the parish belong to the impropriator, and not to the vicar.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon full debate of the matter ; IT IS ORDERED BY THE COURT, that the bill be dismissed.

HILARY TERM
12. Q. ANNE.

MASON against WATSON.

Buckinghamshire, 10th February 1713.

The old demesne lands of the manor of *Edgcott*, in the county of *Buckingham*, which were formerly the estate and inheritance of the *Dormer* family, are tithe free ; the rectors of the parish of *Edgcott* having received four plots of ground in lieu of the tithes thereof ;

THE rector of *Edgcott*, in the county of *Buckingham*, claimed all tithes, both great and small, yearly arising within the said parish.

The defendants said, that the plaintiff is not entitled to tithe in kind of hay arising upon any lands within the said parish, except the same arise in and upon such lands, leys, or meadow grounds as are freehold, and held in fee by the tenant thereof of *Mr. Dormer*, the lord of the said manor ; that all other lands which, time out of mind, have been reputed and taken to be part and parcel of the *Old Demesne Lands* of the manor, being the ancient estate and inheritance of the *Dormers*, have always been held discharged and acquitted of and from the payment of all tithe of hay yearly arising in and upon the same, by reason that the plaintiff has, and his predecessors have, time out of mind, enjoyed four plots of meadow ground, called *the Tythe Plots*, in lieu of all tithes of hay yearly arising in and upon the said *demesne lands* of the manor ; and that the lands in their possession, being parcel of the *Demesne Lands*, are, as well as all other the *demesne lands*, exempt and discharged of the tithes of hay in kind ; but that all other lands, being freehold lands of inheritance, and held of the said manor of *Edgcott*, are liable to the payment of tithe of hay in kind ; that the said four *Tithe Plots* are distinct things from *the glebe*, the said glebe lands, which only consist of a yard land and an half, having over and above the said tithe plots, as much plot grass and mowing ground proportionably allotted to it, as are allotted to other yard lands and an half in the said parish.

The Court ordered a trial at law to be had upon the two following issues :

FIRST, “ Whether the *Four Tithe Plots*, as butted and bounded by the defendant’s answer, have, time out of mind, been enjoyed, and the profit received by the plaintiff and his predecessors

“predecessors, rectors of the said parish for the time being, as a
 “*modus* and discharge for all the tithe hay arising upon all the
 “*Old Demesne Lands* of the *Dormers* within the parish.”

MASON
 against
 WATSON.

SECONDLY, “Whether the defendants, or any and which of
 “them, have, in the last year demanded by the bill, held any
 “other and what hay ground in the said parish, besides what
 “was *Old Demesne* as aforesaid.”

Pursuant to the said order, a view was had of the premises in
 question; and, on the trial, a verdict was given on both the
 issues for the defendants, that is to say, as to THE FIRST ISSUE,
 “that the said pieces, called *the Tithe Plots*, were enjoyed in
 “satisfaction of all tithe hay arising upon the *ancient demesnes*,
 “called *the Old Demesne Lands*, of the said *Dormer*, within the
 “said parish of *Edgcott*, as the defendants in the cause had
 “alleged;” and as TO THE SECOND ISSUE, “that the
 “defendants in the cause had severally held and enjoyed the
 “several parcels of land in *Edgcott* aforesaid, in the several
 “answers mentioned to be titheable lands, and no other.”

Upon reading the *posse*, and hearing what could be alleged
 on both sides; and on mature debate, and consideration of the
 matter,

IT IS ORDERED BY THE COURT, that the bill be dismissed.

MURRAY *against* SKINNER.

HILARY TERM
 12. Q. ANNE.

Essex, 24th February 1713.

THE vicar of *Brightlingsea*, in the county of *Essex*, stated
 by his bill, that he was intitled to receive all tithes in kind,
 as his predecessors, former vicars, had received, or some compo-
 sition for the same; that, time out of mind, there had been,
 within the said parish, several quantities of land, wherein were kept
 and fed great quantities of *oysters* for sale, which turn to great
 account; that the said lands were therefore let at considerable
 rents; and that, by being so used, the tithes of the feed and
 herbage thereof were taken away; that the occupiers of such
 lands had immemorially paid to the vicar of the said parish,
 according to ancient custom, two shillings in the pound of
 the yearly rent of the said lands; and that the defendant
Kingborough, from the year 1708 to the present time, had
 occupied several parcels of land there, in which he had had
 great quantities of *oysters*, of which he refused to pay the tithe.
 The bill also stated, that the defendant *Skinner* had occupied land
 of the yearly value of two hundred and twenty pounds, and had
 kept and depastured thereon divers cows and other cattle, and
 that he had poultry, fruit, wood, and oyster lays, the tithes
 whereof, as also the two shillings in the pound for the oyster
 grounds,

The vicar of
Brightlingsea, in
Essex, claims the
 tithes of *oysters*,
 and of *the Par-
 sonage Farm*, and
 of the *Manor
 Lands*.

MURRAY
against
SKINNER.

grounds ought to have been paid to the plaintiff. The bill further stated, that the said defendants, combining with the defendant *Brand*, the impropiator of the great tithes and lord of the manor, to deprive the plaintiff of his tithes, pretend, that the greater part of the lands held by *Skinner* is part of the *glebe lands* belonging to the rectory; and that within the memory of man no small tithes, or any composition in lieu thereof, have been paid to the vicar, although they well know, that by ancient endowment the same had been paid to the vicar, and that there is no special exemption of any part thereof. The bill therefore prayed a general discovery and relief.

The defendants deny that any tithes are due to the vicar for oyster lays;

The defendants *Skinner* and *Kingborough* admitted the plaintiff to be entitled to vicarial tithes; that the ground stated in the bill was made use of for laying and keeping oysters for sale; and that it never was pasture, or fit for any other use than that of oyster lays; but they denied the custom of paying two shillings in the pound, or any other sum to the vicar, for the tithes of oyster lays or oysters; and insisted, that no tithes are due or payable for such oyster lays or oysters; and they set forth what oyster lays they held, and the values thereof.

and say, that the *Parsonage Farm* consists of the ancient *glebe lands* belonging to the rectory; and that therefore no tithes thereof are due to the vicar;

The defendant *Skinner* set forth what lands he held, and the value of the same, and a particular account of all his titheable matters and things; and said, that he had agreed with the plaintiff for his *small tithes* from *Michaelmas* 1708 to 1709; and that, before any *subpœna* was served, or demand made, and pursuant to the said agreement, he had tendered to the plaintiff six pounds, sixteen shillings, for his small tithes for the said year, but which he had refused to receive; and he insisted, that no small tithes, or any composition in lieu thereof, had been paid to the vicar for the *Parsonage Farm*; and that no tithes whatever are due therefrom, the same being part of the rectory; and that neither the plaintiff or his predecessors was ever endowed of any tithes arising upon the *glebe lands* of the rectory which composed the *parsonage farm*. He also insisted, that the tithe of grass and hay within the said parish by right belongs to the impropiator, and not to the vicar.

and that the vicarage was only endowed with ten marks a-year in lieu of the tithes of the manor lands.

The defendant *Colt* said, that *J. Brand*, deceased, was seised in fee of the rectory and the manor of *Brightlingsea*; and that no tithes for oysters or oyster lays, or any thing in lieu thereof, are due or payable to the plaintiff, as vicar of the said parish, nor is there any custom or usage to pay two shillings in the pound, or any other sum to the plaintiff for the ground used for oysters or oyster lays; and insisted, that if there be any such custom in neighbouring parishes, such custom ought not to conclude the defendant *Elizabeth Brand*, the lady of the manor and owner of the rectory, or him, the defendant, in reversion, for that their predecessors had enjoyed the said *parsonage lands*, with their appurtenances,

appurtenances, freed from *petty tithes*; and that the vicarage was endowed only with *ten marks* to the vicar, with a competent dwelling house, for the manor, theretofore part of the possessions of the abbot of *Saint John's Colchester*, saving also to the said abbot and monk the tithes within the said parish they had before received; that the plaintiff is not, by the said endowment, entitled to demand any tithes of *the glebe lands* and oyster lays, or any thing in lieu thereof, or any more than the said annual pension of *ten marks* in lieu of his small tithes for the said manor and premises, and he insisted that the defendant *Brand* is entitled to all great tithes; that no tithes are due or payable to the plaintiff for any matter on the said glebe lands belonging to the rectory or impropriation; that the plaintiff or his predecessors never received any tithes for any matter arising upon the said glebe lands, or any satisfaction in lieu thereof; and that the farm called *the Parsonage Farm*, consisting of arable pasture and marsh, about eighty acres, is all of *it ancient glebe lands*, and part of the rectory aforesaid, and not titheable to the plaintiff; and he denied he that had any titheable matters in the said parish since the plaintiff had been vicar.

MURRAY
against
SKINNER.

The defendant *Brand* put in the same answer.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the answer of the defendant *Skinner*, whereby it appeared that he had agreed with the plaintiff for small tithes from *Michaelmas 1708* to *Michaelmas 1709*, and tendered six pounds sixteen shillings to the plaintiff for the same before any *subpoena* was served, and had by his answer also tendered the same to the plaintiff, and that the defendants *Brand* and *Colt* had not any titheable matters or things in parish, and reading the depositions of several witnesses, and on full debate,

THE COURT was of opinion that no tithes, or sum of money in lieu of tithes, were due to the plaintiff for oysters and oyster lays, and ordered the said bill, as against the said defendants, to be dismissed with costs, and the defendant *Skinner* to pay to the plaintiff his tender as aforesaid.

EDW. WARD.
THO. BURY.
RO. PRICE.
WM. BANASTRE.

FRANCIS against WILLINGHAM.

Lincolnshire, 19th February 1713.

HILARY TERM
2d. Q. ANNE.

THE rector of *Stickney*, in the county of *Lincoln*, claimed all tithes, both great and small, of a farm called *the Grange*.

The lands called
the Grange, in
the parish of
Stickney, in the county of *Lincoln*,
are tithe free.

Stickney, in the county of *Lincoln*,

The

FRANCIS
against
WILLINGHAM.

The defendant admitted that he was owner of the messuage and lands called *the Grange*, and insisted that the premises were heretofore part of the possessions of the monastery of *Revesby*, in the county of *Lincoln*, which was one of the greater monasteries, and of the *cistercian order*, and of about the value of two hundred pounds a-year; that the abbot, at the time of the dissolution of the abbey, was seised in fee of the premises in right of the said abbey, and in possession thereof at the time of the dissolution; that the abbot and his predecessors, time out of mind, had held the premises discharged from the payment of any tithes whatsoever whilst the said premises were in their own possession; that the premises came to *Henry the Eighth* by statute 31. *Hen. 8. c. 13.* who, and all claiming under him, has and have, ever since held the same freed and discharged from the payment of tithes by virtue of that statute; and he craved the benefit of the same, and also of the statute of *Edward the Sixth*, he being seised of the premises in his own right, and in the occupation of the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon reading the copy of the patent roll of the twenty-second year of *Edward the First*, and the copy of the patent roll of the thirtieth year of *Henry the Eighth*, purporting a grant of the possessions of the said abbey to the then *Duke of Suffolk*, and a copy of the patent roll of the twenty-third year of *Henry the Seventh*, and the defendant's deeds of the purchase, and the proofs in the cause;

THE COURT ordered the plaintiff to bring an action upon the statute of *Edward the Sixth* against the defendant for not setting out his said tithes; the only question to be, whether the lands aforesaid are exempt from payment of tithes, or not; and a trial being had accordingly, the plaintiff, upon full evidence, became nonsuited.

THE COURT therefore ordered the bill to be dismissed.

HILARY TERM
12. Q. ANNE.

BUNNING against CAVE.

Leicestershire, 20th February 1713.

The rector of *Brunthorpe*, in *Leicestershire*, enjoys the lands called the *Tithe-land Piece* in lieu of the tithes of hay arising from the meadow, flades, and balks in the fields called

THE rector of *Brunthorpe*, in the county of *Leicester*, claims tithe of the hay cut off the meadow ground, flades, and balks, within the defendant's possession, within the said parish, or a satisfaction in lieu thereof.

The defendants said, that for the meadow flades, balks, and flades, and all other grass ground in *Streetfield*, *Outfield*, and *Carbrookfield*, not lying ridge and furrow, they never set forth any tithe hay, nor has any been claimed or received by any

rector,

rector, time beyond memory, but that the rector constantly enjoyed a piece of ground called *Titheall*, or *Keitall Piece*, and had taken the grafs and herbage thereof at all times of the year in lieu of all tithe hay got from the meadow flades, balks, and hades in those three fields; that the yearly profits of *Keitall Piece*, or *Titheall Piece*, if well husbanded, will amount to the tenth of the value of the hay yearly gotten from the meadows, hades, flades, and balks, in those three fields.

An issue was directed to try, “Whether *Keitall*, or *Titheall Piece*, has been enjoyed by the rectors of *Brunthorpe* in lieu of all tithes of hay arising from the meadows, hades, flades, and balks in the fields called *Street Field*, *Out Field*, and *Carbrook Field*,” on which trial, a verdict was given for the defendants.

THE COURT, therefore, upon hearing counsel, dismissed the bill with costs.

SHAW *against* TOPPING.

Northamptonshire, 11th May 1714.

EASTER TERM
13. Q. ANNE.

THE bill stated, that within the great level of the town called *the Earl of Bedford's Level*, there were several great quantities of land overflowed with water, which, for several years past, had been recovered and drained therefrom, and become good arable, meadow, and pasture ground; that the said fens and drained grounds never did lie, or were taken to be within the bounds or limits of any parish at any time before the draining thereof, but have always been reputed to be extra parochial, nor have any tithes, or compositions for tithes of the said lands ever been paid to any church or chapel, or to any rector, vicar, or curate, or to any lessee thereof; that her majesty and her predecessors, in right of THE CROWN OF ENGLAND, or their lessees, ever since the draining of the fen lands, have received or been entitled to receive all tithes, both great and small, arising thereon, as extra parochial, and out of the boundary of any parish; that her now majesty, being so entitled, did, the ninth of *November*, in the second year of her reign, by letters patents under the seal of this court, grant and demise the tithes of the said fen lands to *S. Hastings* for thirty-one years, in trust for *Dr. T. Vernon*; that the said *S. Hastings*, by deed, assigned the said lease and tithes to the said *T. Vernon*, who, by deed dated *March 1712*, surrendered to her said majesty the said letters patent, and all the said tithes, which being accepted and intolled in this court, the intest became determined; that thereupon her majesty, by letters patent under the seal of this

The grantees from the crown of the extra parochial tithes of *Bedford Level* are entitled to all tithes arising in the lands called *the Borough Fens*, in kind.

See vol. ii. Shaw v. Styles, Hilary Term, 1. Geo. 1.

SHAW
against
TOPPING.

court, dated the twenty-ninth of *March* 1712, granted and demised to the plaintiff, his executors, &c. for thirty one years, the said extraparochial tithes within the great level, called *the Earl of Bedford's Level*, lying within the meets and bounds mentioned in the said letters patents in the said bill, yielding to her majesty and her successors the third part of the profits yearly during the said term; that thereby the plaintiff, ever since the date thereof, had become entitled to all the extraparochial tithes arising on the said fen lands within the meets and bounds aforesaid; that there are several quantities of fen lands within the precincts of the said great level, commonly called *Borough Fen*, which do not lie within the precinct of any parish, but are extra parochial, and therefore the tithes thereof, both great and small, ought to be paid to the plaintiff; that the defendants have occupied, since the date of the said letters patent, great quantities of arable, meadow, and pasture lands lying in the said fen, and have ploughed and sowed the same with several sorts of corn, grain, and seeds, and reaped and gathered the whole crops thereof, and converted the same to their own use, without setting out the tithes thereof, or making any satisfaction for the same, and which they had refused to do, pretending that the said land is not extraparochial, or that some *modus* is payable for the same. The bill therefore prayed an account of the quantities and qualities of the defendant's tithes, and a satisfaction for the same.

The defendants said, that it might be true that such letters patents of the extraparochial tithes arising upon the lands in *Bedford Level* might be granted as in the bill is set forth; that within the precinct of the said great level there are great quantities of fen lands, commonly called *Borough Fen*, and that the lands lying in that fen are, and have been reputed extra parochial, but that tithes in kind are not due for those lands; for that, time out of mind, a *modus* or customary payment of fourpence an acre, or proportionably after that rate, had been yearly paid and payable by the occupier of the said lands in *Borough Fen* for the tithes thereof to the crown, or to its lessees of the extra parochial tithes within the said great level, and by them accepted in full discharge of all tithes arising upon the said lands; that no tithes in kind, or any other satisfaction for tithes at any time had been paid for their said lands, except two years since, when some of the defendants paid *Dr. Vernon's*, or the plaintiff's agent two shillings in the pound according to the rents of their several farms in the said *Borough Fens*, for the tithes of the said lands: and all the defendants set forth the quantity of land they held in the said fen, and the value of their tithes, and said, that they held the lands as tenants under the *Earl of Torrington*; and insisted, that they had tendered the fourpence an acre to the plaintiff, with his costs of suit.

The

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the several letters patent, a lease set forth in the bill, and likewise a copy of letters patent dated the thirteenth of *November*, in the thirteenth year of *Charles the Second*, whereby the same were granted to *Sir C. Berkeley* and *Dr. B. Gascoigne, Knt.* also an agreement dated the eleventh of *December 1674*, made by the said *Gascoigne* to *Sir John Shaw, Bart.* deceased (the plaintiff's father), for the tithes of six hundred and fifty acres of land lying in *Peterborough Great Fen*, after the yearly rate of sixpence an acre, upon which are indorsed several receipts for several years, and upon reading several depositions taken in the cause, and on full debate,

SHAW
against
TOPPING.

IT IS ORDERED AND DECREED BY THE COURT, that the defendants do severally account with and satisfy the plaintiff for all the tithes, both great and small, arising upon the said several lands in *Borough Fen* respectively occupied by them during the time in the bill mentioned.

SAM. DODD.
THO. BURY.
RO. PRICE.

SMITH *against* STARKEY.

EASTER TERM
13. Q. ANNE.

Lancashire, 15th April 1714.

THE bill stated, that the plaintiff was, and for several years past had been, possessed of several lands in the town of *Quarmore*, in the county of *Lancaster*, within the bounds of the ancient *Forest of Quarmore*; that the said forest was never *disforested*; that all the lands there were anciently in the hands of the kings and queens of England, and exempted from the payment of tithes, or any composition in lieu thereof, as by the prerogative of the crown they ought to be; that the said lands, when aliened, were enjoyed by the owners free from the payment of tithes; that all the said lands had so remained tithe free till about thirty-five years ago, when *Sir R. Bindlefs*, deceased, prevailed on some of the land holders there to pay him small sums of money as compositions for tithes, and others to pay him by way of tithe corn in kind; that neither the said *Sir R. Bindlefs*, or any claiming under him, ever brought any action against such persons as refused to pay tithes until the year 1709, when the defendant libelled against the plaintiff for tithe of corn in kind growing on the plaintiff's lands in *Quarmore*; and that the plaintiff thereupon obtained a *prohibition* out of this court. The bill further stated, that the tithes of the pre-

The inhabitants and land holders of *Quarmore Forest* are titheable to the impropiator of the parish of *Lancaster*.

SMITH
against
STARKEY.

mises, if any were due, belong to THE CROWN, as issuing out of *forest lands*, and therefore the defendant cannot have any title thereto, save to such as are derived by or under THE CROWN. It also stated, that on the dissolution of monasteries the tithes of the parish of *Lancaster* were vested in *Henry the Eighth* by a different title than that which his majesty had to *Quarmore Forest*; and therefore, although the tithes of the parish of *Lancaster* were granted out of THE CROWN, and the defendant claimed under such grant, yet that would not extend to *Quarmore*, it being extra parochial, and dependant upon a different title; that the defendant claimed under *Bindlefs* as impropiator, and by a distinct grant from THE CROWN to that of the forest; and that he never brought an action of debt or otherwise to make out his title. The bill therefore prayed to be relieved in the premises.

The defendant, by his answer, said, that he believed the plaintiff was possessed of some lands in *Quarmore*, lying in the rectory or parish of *Lancaster*, but that, admitting such lands were in the said forest, and anciently in THE CROWN, the same, for several ages past, had been in the possession of patentees, or other persons claiming under them; that THE CROWN, by prerogative, was not discharged of tithes for *demefne lands*, and that when THE CROWN alienated such lands, such privilege ceased, and tithes in kind became due after alienation in the hands of the patentees, or of those claiming under them. The defendant further stated, that the tithes of corn of the lands in the said forest are due to the rectory and parsonage impropriate of *Lancaster*, and had been paid time out of mind, as well by others as by the plaintiff, till three years past; that the inhabitants in *Quarmore* now do pay, and for time immemorially have paid tithes and *Easter* dues to the vicar of *Lancaster*; that *Quarmore*, when perambulations were made, was included in them, and taken as part of *Lancaster* rectory; that the said *Sir R. Bindlefs*, being seised in fee of the said rectory of *Lancaster*, of the tithe barn, of the tithes of corn, lamb, and of all mixed tithes and oblations whatsoever arising in *Quarmore*, in the said forest, or elsewhere in the said rectory of *Lancaster*, the same came, by mesne conveyances, to the defendant on trust to sell the same, and out of the purchase money to pay such sums of money as in the deed are expressed; that such of the inhabitants of *Quarmore*, as did not pay their tithes in kind, paid a composition in lieu thereof, during *Sir R. Bindlefs*'s life, and that since his death they had paid the same to his lady. The defendant admitted the prosecution and prohibition as stated in the bill, and said, that some of the inhabitants in *Quarmore* do now pay the defendant their *modus*, and that he takes it to be a strong agreement that tithes in kind are due where such *modus* is not paid.

The

The plaintiff replied; the defendant rejoined; and divers witnesses were examined on both sides; and the cause came on to be heard on the eleventh of *December*, when it was ordered to stand over for further hearing; but the plaintiff refusing to bring it on, it was, by order of the twenty-fourth of *February* last, ordered to come on at the defendant's request; and now the defendant's counsel praying that the bill may be dismissed, and upon reading an affidavit of due service of *subpœna* on the plaintiff to hear judgment, and no counsel appearing for the said plaintiff,

SMITH
against
STARKEY.

IT IS ORDERED BY THE COURT, that the said bill be, and the same is hereby dismissed, with costs to be taxed by the deputy remembrancer of this Court.

SHERIS *against* BASKERVILLE.

TRIN. TERM,
13. Q. ANNE.

Berkshire, 14th June 1714.

THE rector of *Summingwell*, in the county of *Berks*, claimed the tithes of a certain farm called *Bagworth Farm*; a great part of which is situated in the said parish, and the other part in the parish of *Saint Nicholas*; and stated, that the defendants *Baskerville* and *Brookland* are possessors and occupiers of the said farm, and that they, combining with the defendant *Redrobe*, rector of *Saint Nicholas*, had carried away their titheable matters without setting out the tithes of the same.

One moiety of *Bagworth Farm*, in *Berkshire*, lies in the parish of *Summingwell*, and the other moiety in the parish of *St. Nicholas*; but the rector of *Summingwell* is not entitled to any of the tithes of the moiety which lies in his parish.

The defendants admitted that one moiety of all tithes arising upon the said farm had, time out of mind, been received by the plaintiff's predecessors as rectors of the said parish; but said, that the defendant *Redrobe*, rector of *Saint Nicholas*, claimed all the tithes arising upon the said farm, and, by indenture dated the twentieth of *December*, in the seventh year of *Queen Anne*, had leased the same to the said defendants at six pounds a-year; and they denied that any part of the said farm lay in the parish of *Summingwell*.

The Court directed these issues to try, "Whether any, and
" what part of *Bagworth Farm* lies within the parish of *Sum-*
" *mingwell* and the titheable places thereof;" and "Whether
" the plaintiff, as rector of *Summingwell*, is entitled to any, and
" what part of the great tithes arising upon the said farm, or
" not;" and upon the trial, the jury found "that one moiety
" of the said farm, called *Bagworth Farm*, did lie in the parish
" of *Summingwell*, but that no part of the said farm laid in the
" titheable places thereof, and that none of the tithes arising

N n 3

" upon

SHERIS
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“ upon *Bagworth Farm* did belong, or were due and payable
“ to the plaintiff, as rector of *Summingwell*.”

THE COURT therefore ordered the bill to be dismissed, with costs to be taxed by the deputy remembrancer, in doing which, he is to have regard to the costs touching the examination for proving in which of the parishes a moiety of the said farm did lie.

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C O N T E N T S
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7. *Quare*, Whether a person living out of the parish, and having no land therein, but sending beasts there to be agisted, shall pay the tithes for their depasturing, *Coe v. Smith*, 400

8. A custom to pay twopence halfpenny a beast for the agistment of such barren cattle as are the proper stock of the occupier, and two shillings in the pound for the agistment of the cattle of strangers, is bad ; for the tithe of herbage ought to be paid for the agisting both of the barren cattle of occupiers, as well as strangers, *Ekins v. Bridges*, 418

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3. The rector of *St. Botolph, Aldgate*, is only entitled to a *modus* of 5l. payable quarterly for *Hooker's Rents*, in *Nightingale Lane*, and *San Yard*, *Umfreville v. Campion*, 329

4. The king is entitled to appoint a curate to the church of *St. Botolph, Aldgate* ; and he is entitled to a pension of 8l. a year, and 40s. for bread and wine, *Hollingworth v. Umfreville*, 332

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ALDMINSTER.

1. The vicar of *Aldminster* is entitled, at *Lammas Day* yearly, to a farthing for every sheep agisted in the common fields, in lieu of the tithe of wool ; to one calf in seven, paying the owner three halfpence ; to one halfpenny for every six calves ; and to one calf out of every ten, in lieu of tithe calves ; to one penny for every milch cow fed in the common fields, in lieu of tithe milk ; and to one penny in lieu of the tithes of firewood, *Swan v. Stanley*, 196

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